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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 125

A. L. SHAPLEIGH ET AL., PETITIONERS,

vs.

PASCUAL MIER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 19, 1936.

CERTIORARI GRANTED OCTOBER 12, 1936.

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Caption.

BE IT REMEMBERED that at a regular term of the District Court of the United States in and for the Western District of Texas, in the El Paso Division thereof, the Honorable Charles A. Boynton, a United States District Judge, then and there presided and held a session of said Court at the City of El Paso, Texas; that said term began on the first day of October, A. D. 1934, and terminated by operation of law on the 31st day of March, 1935; that during said term, on the 25th day of October, 1934, there came on to be heard before the Court, and was continued from day to day and term to term thereafter until determined on the 5th day of July, A. D. 1935, the following cause:

A. L. Shapleigh, et al., Plaintiffs,

vs.

Pascual Mier, Defendant.

No. 1650-at Law.

A transcript of the proceedings follows:

Second Amended Original Petition.

Filed October 24, 1934.

In the District Court of the United States for the Western District of Texas, El Paso Division.

A. L. SHAPLEIGH, THOMAS R. LYLE, ROBERT P. R. LYLE, DAVID R. LYLE, MARGARET C. LYTLE, JANE P. HANNA, MISSISSIPPI VALLEY TRUST COMPANY, Trustee under the will of Hugh R. Lyle, Deceased, and REBECCA P. DUSENBERY, BELIE P. BRYANT, MAX M. BRYANT, and ELIZABETH P. PECK, Trustees, under the will of Charles H. Peck, Deceased,

Plaintiffs,

vs.

PASCUAL MIER (Also known as Pascual Carlos Mier), and DAVE GILL,

Defendants.

AT LAW.
No. 1650

To the said Court:

Come now A. L. SHAPLEIGH, THOMAS R. LYLE, ROBERT P. R. LYLE, DAVID R. LYLE, MARGARET C. LYTLE, JANE P. HANNA, MISSISSIPPI VALLEY TRUST COMPANY, a corporation, Trustee under the Will of Hugh R. Lyle, Deceased, and REBECCA P. DUSENBERY, BELLE P. BRYANT, MAX M. BRYANT, and ELIZABETH P. PECK, Trustees under the Will of Charles H. Peck, Deceased, hereinafter styled Plaintiffs, and by leave of court previously obtained, file this their Second Amended Original Petition, and for cause of action against PASCUAL MIER (Also known

as Pascual Carlos Mier), and DAVE GILL, hereinafter styled Defendants, respectfully represent to the court as follows, to-wit:

I.

Plaintiffs are citizens of the State of Missouri, and are residents of the city of St. Louis in said State.

II.

Defendant Pascual Mier (Also known as Pascual Carlos Mier) is an alien, a citizen of the Republic of Mexico, and is a resident of the City and County of El Paso in said State, in the El Paso Division of the Western District of Texas. Defendant, Dave Gill is a citizen of the United States and of the State of Texas, and is a resident of Hudspeth County, Texas in said Division and District.

III.

The amount in dispute, exclusive of interest and costs, exceeds the sum or value of Three Thousand Dollars ($3,000), and is of the sum or value of, to-wit: Twenty-five Thousand Dollars ($25,000).

IV.

On the 2nd day of January, 1933, Plaintiffs were, and still are, the owners in fee simple of the following described land and premises situated in the County of Hudspeth, State of Texas, known as Guayuco Banco No. 319:

> Beginning at Banco Post No. 8 which lies N. 56 degrees 47′ W. 25.0 meters from a concrete reference monument designated R P-319, Lat. 31 deg. 07′ 45.71″, Long. 105 degrees 39′ 57.65″

Thence N. 57 degrees 54′ E. 46.9 meters to Post No. 9
Thence S. 65 degrees 44′ E. 74.5 meters to Post No. 10
Thence S. 24 degrees 50′ E. 64.1 meters to Post No. 11
Thence S. 52 degrees 26′ W. 99.3 meters to Post No. 12
Thence S. 5 degrees 48′ W. 56.7 meters to Post No. 13
Thence S. 60 degrees 09′ E. 57.3 meters to Post No. 14
Thence S. 33 degrees 49′ E. 79.9 meters to Post No. 15
Thence S. 63 degrees 21′ E 88.7 meters to Post No. 16
Thence N. 65 degrees 42′ E. 128.0 meters to Post No. 17
Thence N. 76 degrees 48′ E. 82.1 meters to Post No. 18
Thence S. 35 degrees 36′ E. 140.9 meters to Post No. 19
Thence S. 83 degrees 34′ E. 68.1 meters to Post No. 20
Thence N. 68 degrees 39′ E. 112.3 meters to Post No. 21
Thence N. 40 degrees 06′ E. 77.6 meters to Post No. 22
Thence N. 56 degrees 21′ E. 116.4 meters to Post No. 23
Thence N. 84 degrees 28′ E. 181.1 meters to Post No. 24
Thence N. 72 degrees 29′ E. 404.2 meters to Post No. 25

Thence N. 86 degrees 56′ E. 144.9 meters to Post No. 26

Thence S. 61 degrees 05′ E. 122.0 meters to Post No. 27

Thence S. 3 degrees 53′ W. 52.6 meters to Post No. 28

Thence S. 83 degrees 18′ W. 60.0 meters to Post No. 29

Thence S. 11 degrees 46′ W. 392.8 meters to Post No. 30

Thence S. 0 degrees 39′ E. 290.9 meters to Post No. 31

Thence S. 16 degrees 17′ W. 74.8 meters to Post No. 32

Thence S. 36 degrees 39′ W. 50.2 meters to Post No. 33

Thence S. 25 degrees 53′ W. 316.3 meters to Post No. 34

Thence S. 19 degrees 03′ W. 285.3 meters to Post No. 35

a point on the northerly bank of the Rio Grande thence up the Rio Grande with its meanders and following the northerly bank to Post No. 1

Thence N. 33 degrees 19′ W. 257.5 meters to Post No. 2

Thence N. 47 degrees 43′ W. 179.6 meters to Post No. 3

Thence N. 20 degrees 21′ W. 51.3 meters to Post No. 4

Thence N. 45 degrees 33′ E. 33.5 meters to Post No. 5

Thence N. 65 degrees 06′ E. 89.6 meters to Post No. 6

Thence N. 35 degrees 17′ E. 59.5 meters to Post No. 7

Thence N. 17 degrees 35′ E. 304.9 meters to Post No. 8

the point of beginning and containing 136.6 hectares (337.6 acres), more or less.

V.

On said date Plaintiffs were in possession of the described premises and afterwards, to-wit, on the 3rd day of January, 1933, Defendants unlawfully entered upon and dispossessed the Plaintiffs of said premises and property and unlawfully withhold from them the possession thereof.

VI.

Defendants have occupied and used said premises under such unlawful possession, and the rental value thereof during such occupancy is the sum of Five Thousand Dollars ($5,000), in which amount, by virtue of such wrongs, the Defendants are justly indebted to Plaintiffs, but, though repeated demand for the payment thereof has been made of Defendants by Plaintiffs, Defendants have failed and refused, and still fail and refuse, to pay the same or any part thereof, to Plaintiffs' damage in the sum of Five Thousand Dollars ($5,000).

VII.

Plaintiffs allege that this court has jurisdiction of this case, not only on account of diversity of citizenship, but also because Plaintiffs' rights grow directly out of a treaty, to-wit, the Treaty of 1905, between the United States and Mexico.

VIII.

Plaintiffs further allege that they have had more than twenty (20) years' possession of the land in controversy, founded on a just title, in good faith, peaceful, continuous, and public, and therefore they are vested with valid title by limitation to said land, under the provisions of Articles 1065 et seq. (particularly Articles 1085 and 1092) of the Civil Code of the State of Chihuahua, Mexico.

WHEREFORE, Plaintiffs pray that they have judgment for the title and possession of the above described premises, for their damages, for costs of suit, and for such other and further relief as they may be entitled to, either at law or in equity.

McKENZIE, WALTHALL & GAMBLE
By H. R. GAMLE
Attorneys for Plaintiffs.

Defendant's Answer.

Filed August 30, 1933.

To said Honorable Court:—

Comes now Pascual Mier, defendant in the above numbered and entitled cause, and excepts to plaintiffs' petition filed herein, for the reason that same is insufficient in law and states no cause of action against this defendant, and of this he prays the judgment of the Court.

RICHARD F. BURGES
WALTER S. HOWE
Attorneys for Defendant.

Second: If held to answer herein, this defendant says that he is not guilty of the injury complained of in the petition filed by plaintiffs against him.

WHEREFORE, premises considered, defendant prays that plaintiffs take nothing by their suit and that defendant go hence with his costs without day.

RICHARD F. BURGES
WALTER S. HOWE
Attorneys for Defendant.

Plaintiffs' First Amended Original Abstract of Title.

Filed October 15, 1934.

(See page 9).

Defendant's Abstract of Title.

Filed November 4, 1933.

(See page 253).

Stipulation.

Filed October 25, 1934.

It is stipulated and agreed by and between the parties plaintiff and defendant in the above styled and numbered cause, acting through their Attorneys of Record, as follows:

FIRST: That each of the instruments and maps set forth and embraced in plaintiff's Abstract of Title filed in the court October 1, 1933, and in defendant's Abstract of Title, filed November 4, 1933, were signed and executed by the several persons who therein purport to execute the same and in the capacity therein stated; and where acknowledged before a Notary Public or other official, that the certificate of acknowledgment, verification or proof was executed by the official who purported to execute the same; and that the copies of such instruments

in said abstracts contained may be admitted in evidence, subject to all such exceptions and objections only as could be offered to the original instrument, if the same were offered in evidence.

SECOND: It is admitted and agreed that the plaintiffs are citizens and residents of the State of Missouri and the United States of America, and that the defendant is a citizen of the Republic of Mexico, and resides in El Paso, Texas.

McKENZIE, WALTHALL & GAMBLE,
Attorneys for Plaintiffs,
By H. R. GAMBLE.

RICHARD F. BURGES
WALTER S. HOWE,
Attorneys for Defendant,
By RICHARD F. BURGES.

Statement of Evidence and Bill of Exceptions.

Filed October 21, 1935.

BE IT REMEMBERED, That on this October 25, 1934, the above entitled and numbered cause came on for trial before the Honorable Charles A. Boynton, a United States District Judge in and for the Western District of Texas, a jury having been waived by the parties; plaintiffs being represented by J. F. McKenzie, Esq., and Harvey R. Gamble, Esq., and the defendant by Richard F. Burges, Esq. and Walter S. Howe, Esq., all of El Paso, Texas; during the trial of which cause the following facts were adduced, objections made, and exceptions reserved by the parties:

Plaintiffs offered in evidence Minute No. 121 of the International Boundary Commission, United States and Mexico, dated March 3, 1930, relating to El Guayuco Banco No. 319; same being marked "P-1", and being in words and figures as follows:

P. 1

INTERNATIONAL BOUNDARY COMMISSION
UNITED STATES AND MEXICO

El Paso, Texas, March 3, 1930

MINUTE NO. 121

The Commission met at the office of the American Section, El Paso, Texas, on Feb. 20, 1930, at 9:00 o'clock a. m. in accordance with notices previously posted in public places throughout the El Paso-Juarez Valley, published in the newspapers and mailed to all parties of record interested in the alleged bancos that are pending for elimination in the El Paso Juarez Valley.

The Commissioner of the United States explained the treaties in force, the scope of the work of the International Boundary Commission, the methods followed by it in collecting data in the form of testimony, statements and maps, and the purpose of the present session. He stated that the Commission desired particularly to acquire information as to the location of the Rio Grande at various definite dates and maps or testimony as to when and how such changes in location were effected. A list of nineteen tracts of land classed as bancos and numbered 301 to 319 inclusive, in reports of Consulting Engineers, was read and invitation extended for anyone present to offer testimony prior to the Commission's contemplated action in eliminating these lands from the effects of Article II of the Treaty of November 12, 1884.

Major R. F. Burges appeared before the Commission representing the claimants under the American titles on the Weber and San Lorenzo tracts. He stated his intention of presenting evidence showing that these two tracts of land are not bancos within the meaning of the Boundary Treaties. He requested further time to assemble statements and procure witnesses in support of his contentions. Major Burges also reported representing claimants under American title to the Nunez tract and requested time to present his contentions.

Mr. Edward D. Tittman, attorney for the claimants under Mexican title on the Weber and San Lorenzo tracts stated his intention of appearing to refute the argument to be presented by Attorney Burges. Wednesday, February 26, at 10:00 o'clock A. M. was set for the time for hearing such evidence.

Mr. C. M. Newman was present in the interest of himself and other owners of tracts called La Piedra, Max Muller, La Cachanilla, Rincon de Marcelino, Gallego and Camp Rice. He was informed that the Commission

would later set a date for consideration of evidence relative to these tracts.

Other parties present were: Alfonso Martinez, interested in the Weber, San Lorenzo and the Bermudez tracts; Edmundo C. Arguelles, representing the Agricultural Company of Juarez, interested in Campania Agricola tract; and a number of other citizens of the United States and Mexico either directly or indirectly interested in the proceedings of the Commission.

The Commission adjourned to meet and continue its session in Juarez, Mexico, the following day (February 21, 1930), at 9:00 o'clock a. m. in the office of the Mexican section.

On reconvening in Juarez on February 21, the Mexican Commissioner explained the Boundary Treaties in the Spanish Language, and invited interested parties to present testimony and evidence concerning the changes in the Rio Grande's channell which affected tracts of land cut from one country to the other included in the list of nineteen and covered by published notices, or any other tracts.

The following persons were present: Ignacio Rueda, interested in the Weber and San Lorenzo tracts; Paul Creswell, Sr. and Jr., interested in the Rivera tract; Pascual C. Mier interested in the El Colero and El Guayuco tracts; Jose M. Ramirez and Eduardo Delgado, interested in the Bermudez tract; E. C. Arguelles and C. A. Campbell, interested in the Compania Agricola tract; Anacleto Ildefonso Azcarate, representing the estate of Juan B. Azcarate, interested in the Bermudez tract; Fernando Rey, interested in the Senecu tract; Manuel Ramirez Vallejo, representing General C. Fox, interested in the Rincon de Marcelino tract; Mr. Edward D. Tittman, representing Max Muller, interested in La Piedra, Maz Muller and La Chachanilla tracts.

After informing the parties present of the hearing on the San Lorenzo and *Wbwer* tracrs set for February 26, 1930, and if necessary, meetings would be held in Juarez to accommodate any persons not conveniently able to attend the sessions in El Paso, the Commission adjourned to meet on February 26, 1930.

The two sessions mentioned above developed the fact that no opposition existed to the following tracts being classified as Bancos and to their being eliminated as such from the effects of Article II of the Treaty of November 12, 1884, and to their national sovereignty and jurisdiction being established in accordance with the provisions of the treaty of March 20, 1905: 303 "Bermudez", 304 "Azcarate", 303 "Compania Agricola", 310 "Arroyo del Almo", 311 "Newman", 315 "Charles Davis", 316 "El Calero", 317 "Pruitt", 318 "El Diable" and 319 "El Guayuco."

The Commissioners received the report of the consulting Engineers dated February 24, 1930, that is attached hereto and made a part hereof, bearing reference to the above named uncontested bancos.

The Commissioners having previuosly studied all available data relative to the uncontested bancos, the following resolution was adopted: "The tracts of land known as bancos numbered 304 "Azcarate", 310 "Arroyo del Almo", 311 "Newman", and 317 "Pruitt", which are cut from the United States of America and are now attached to the south or right bank of the Rio Grande, described in the report of the Consulting Engineers dated February 24, 1930, and shown in four individual maps attached to this minute, are hereby eliminated from the effects of Article II of the Treaty of November 12, 1884, and the dominion and jurisdiction of these four bancos shall pass to Mexico in accordance with the provisions

of the treaty of March 20, 1905, for the elimination of bancos and the tracts of land known as bancos numbered 303 "Bermudez", 305 "Compania Agricola", 315 "Charles Davis", 316 "El Calero", 318 "El Diable" and 319 "El Guayuco", which were cut from Mexico and are now attached to the north or left bank of the Rio Grande, described in the report of the Consulting Engineers dated February 24, 1930, and shown on six individual maps attached to this minute, are hereby eliminated from the effects of Article II of the Treaty of November 12, 1884, and the dominion and jurisdiction of these six bancos shall pass to the United States of America, in accordance with the provisions of the treaty of March 20, 1905, for the elimination of bancos.

Immediately thereafter the Commissioners signed the ten Maps to scale of 1:5000, corresponding to each of the bancos enumerated above, and described in the report of the Consulting Engineers. Said maps are attached hereto and made a part hereof.

The Commission then adjourned to meet at 9:00 o'clock a. m. on March 4, 1930, at the office of the American Section to accord further hearings on the Weber, San Lorenzo and other tracts in the El Paso-Juarez Valley.

L. M. LAWSON
Commissioner of the United States

GUSTAVO P. SERRANO,
Commissioner of Mexico.

CLARK W. CREPS,
Secretary of the United States Section

JOSE HERNANDEZ OJEDA,
Secretary of the Mexican Section.

Plaintiffs offered in evidence report of the engineers

of the International Boundary Commission, dated February 24, 1930, relating to El Guayuco Banco: same being marked "P-2", and being in words and figures as follows:

P. 2

INTERNATIONAL BOUNDARY COMMISSION
UNITED STATES AND MEXICO

• • • •

El Paso, Texas, February 24, 1930

The Honorable Commissioners,
International Boundary Commission,
United States and Mexico.

Sirs:

Complying with your verbal instructions and those contained in Minute No. 102, dated February 27, 1928, we submit the following report on banco cases in the El Paso Valley.

A history of Bancos Nos. 301 to 316 inclusive, was submitted by Consulting Engineers Santacruz and Fishburn in a report dated July 30, 1925. Since that time three additional bancos have been investigated and surveyed. These are numbered 317, 318 and 319. This report covers ten of the above cases. Ten Maps and a table are attached.

BANCO NO. 303 "BERMUDEZ"

Located in El Paso County, Texas, about nine kilometers southeast of El Paso, Texas, 3 kilometers S. of R. P. No. 2, in what is known as Valley Gate Addition.

Cut from Mexico in 1902.

Claimant: Estate of Mrs. J. J. Bermudez.

Area to the present river 92.5 hectares (228.5 Acres).

No inhabitants.

Part of the old river channel is still plain on the ground.

BANCO NO. *034* "AZCARATE"

Located in the Municipality of Jaurez, Chihuahua, 3 kilometers northeast of Senecu, and ½ kilometer S. W. of R. P. No. 3.

Cut from United States in 1904.

Claimant unknown.

Area to the present river channel is 38.9 hectares (96.1 Acres).

Part of the old river channel is still plain on the ground and most of the land is under water.

BANCO NO. 305 "COMPANIA AGRICOLA"

Located in El Paso County, Texas, and 3 kilometers S. W. of R. P. 7.

Cut from Mexico in 1916.

Claimant: Compania Agricola de Cuidad Juarez, S. A.

Area to present river 48.8 hectares (120.6 acres).

Six inhabitants.

The old river channel is very plain around this banco and perfectly fits in the 1907 survey.

BLANCO NO. 310 "ARROYO DEL ALAMO"

Located in the Municipality of Guadalupe, Chih., at Miramar, at the south of the Arroyo del Alamo, and 3 kilometers W. of R. P. 27.

Cut from the United States in 1905.

Claimant: C. M. Newman.

Area to the present river 86.6 hectares (214.0 acres).

The old river channel is plain on the banco and approximately fits the Emory map.

BANCO NO. 316 "EL CALERO"

Located in Hudspeth County, Texas, 1½ kilometers southeast of Dave Gill's Gin, and R. P. 37.

Cut from Mexico in 1907.

Claimant: Pascual C. Mier.

Area to the present river 16.9 hectares (41.7 acres).

The old river channel is still plain on the ground.

BANCO NO. 317 "PRUITT"

Located in the Municipality of Guadalupe, Chih., about 2 kilometers southeast of R. P. No. 38 "Fort Quitman."

Cut from the United States in 1905.

Claimant: Mr. Pruitt.

No inhabitants.

Area; 16.8 hectares (41.5 acres).

The old river channel is plainly seen on the aerial photographs.

Follett made a survey of this banco in 1908.

BANCO NO. 318 "EL DIABLO"

Located in Hudspeth County, Texas, at the south of the Diablo Arroyo, south of R. P. No. 30 and southwest of McNary, Texas.

Cut from Mexico in 1926.

Claimants unknown.

No inhabitants.

Area to river 38.8 hectares (95.9 acres).

The old river channel is perfectly defined around this banco. The cutoff was the result of the filling up of the old channel by detritus from the Diablo Arroyo.

BANCO No. 319 "EL GUAYUCO"

Located in Hudspeth County, Texas, at the mouth of the Guayuco Arroyo, south of R. P. No. 36 and southwest of "Dave Gill" gin.

Cut from Mexico in 1926.
Claimant: Pascual C. Mier.
Area to river 136.6 hectares (337.6 acres).

The old river channel is perfectly defined around this banco.

The cutoff was the result of the filling up of the old channel by detritus from the Guaguco Arroyo.

These ten tracts of land were formed by avulsive river movements and the conditions present meet the requirements of the Treaty of 1905 for the elimination of bancos.

Respectfully submitted,

C. M. AINSWORTH,
Consulting Engineer, United States Section.

ARMANDO SANTACRUZ, JR.
Consulting Engineer, Mexican Section.

Plaintiffs offered in evidence International Boundary Commission map of El Guayuco Banco No. 319, same being marked "P-3", and a copy thereof being as follows:

(This map ordered sent to the Circuit Court of Appeals as an original exhibit).

Plaintiffs offered in evidence their exhibits 4 and 5, being Spanish document (marked "P-4" dated November 29, 1864, whereby the President of Mexico ratified in Laureano Munos title of ownership of a tract of land called La Santisima; No. 6 being English translation thereof.

COUNSEL FOR DEFENDANT: In view of the fact that the Court is reserving its ruling as to the admissibility or effect of the instruments, I believe

it would be most practicable to let counsel read the translation of the instruments, then let us state the objections. I think the Court would catch them much more readily, instead of objecting before it is read, read it and then we will state our objections for the record.

THE COURT: Very well, the instrument may be read, subject to your objections, grounds of your objection to be set forth in detail following the reading.

(Counsel read English translation).

COUNSEL FOR DEFENDANT: Now, we object to the instrument, if the Court please, for the reason it appears, purports to be a confirmation of a title, but no grant of a title is shown, and there is no such description in this instrument as would enable a person to locate the land under any circumstances, and, third, on the ground that it does not appear to have been executed with that mutuality which is required by the laws of Mexico in passing title to land. As I understand, it will come out again and again during the trial. Their practice differs materially from ours, in this, that the deed is not just a conveyance from one party to the other, but must be accompanied by the affirmative acceptance by the other party.

THE COURT: Very well, you may proceed.

COUNSEL FOR DEFENDANT: And counsel also calls my attention that the instrument itself refers to a title by virtue of an adjudication to the party to whom it is addressed, and there is no evidence of such an adjudication, or any means by which it could be located or established.

COUNSEL FOR PLAINTIFFS: I would like to ask, your Honor, that Mr. Valenzuela be sworn at this time.

COUNSEL FOR DEFENDANT: Therefore, we submit it is irrelevant and immaterial.

The document, marked "P-5", being English translation of the Spanish document, is in words and figures as follows:

P. 5

Department of LANDS
Section I. of Procedure

Seal reading:

"Federal Executive
Power. Mexico.
United Mexican States."
National emblem in circle.

• • • •

Department of
Agriculture and Fomento

• • • •

EXECUTIVE BOARD OF LANDS,
COLONIZATION, WATERS AND
IRRIGATION.

In the Margin: Documentary Stamps duly cancelled and the word "Compared."

And "Agreed to" (Signed) Octavio Andrade. with rubric.

In the center: • • • •

"In the margin:—Department of Justice, 2nd Section.—In the center.—In accordance with the Supreme Ruling

of the 23rd of the past month, the President of the Republic has deemed proper to ratify the title of ownership issued by the Government of this State on October 31, 1859, by virtue of which there was adjudicated to you, for the amount of $6,000.00 thirty-four sitios of ganado mayor (old land measure), situated on the right bank of the Bravo river from the old Presidio (fortress) up to the mines of the presidio of Pilares. I communicate same to your for your information and satisfaction. Liberty and Constitution and Reform. . Chihuahua November 29, 1864. Churches. To Lic. Laureano Munos.

THIS IS A COPY WHICH I CERTIFY WAS TAKEN FROM THE DOCUMENTS IN EVIDENCE FOUND IN THE RESPECTIVE FILE.

Mexico, January 10, 1924.

THE SECOND CHIEF CLERK
Signed Gmo. S. Seguin (Rubric)

(La Santisima)

Trans.
JEMH

Department of LANDS
Section I. of Procedure
Number 229

Seal reading:

"FEDERAL EXECUTIVE
POWER, MEXICO
United Mexican States"

National Emblem in
the circle.

Department of
Agriculture and Fomento

SUBJECT:

That the copies asked for require the amount of $7.50 plus 15 stamps of $0.50 for their certification.

C. I. 20

Annex A-8

In answering this communication quote the classification.

EXECUTIVE BOARD OF LANDS
COLONIZATION, WATERS
AND IRRIGATION.

To MR. DELBERT J. HAFF
C/o Marland Oil Company of Mexico, S. A.
Av. 5 de Mayo, No. 6.
CITY.

With reference to your letter dated the 18th inst., I inform you there have been finished the copies as requested, which require the amount of $7.50 to be delivered into the paymaster's office of this department, presenting in the Land Department of the Executive Board of Lands, Colonization, Waters and Irrigation the respective *mou*cher and supplying 15 documentary stamps of $0.50 for their certification.

As the original title of the property "La Santisima" does not exist, issued by the Government of the State of Shihuahua in the year 1859, the certified copy of the same as requested, is not supplied you.

EFFECTIVE SUFFRAGE. NO RE-ELECTION.

Mexico, December 31, 1923.

THE UNDER-SECRETARY
by (Signed) J. PEDRERA CORDOVA

CGE.LPA
18401

TRANS.
JEMH.

GILBERTO VALENQUELA,

a witness for plaintiffs, being first duly sworn, testified as follows:

ON DIRECT EXAMINATION:

My name is Gilberto Valenquela. I am a member of the Bar of Mexico, admitted to the Bar in 1915. I studied law in the law school in Guadalajara and Mexico City; I got my degree in Guadalajara.

I was Secretary of the Interior three times; the first time in 1920, when Adolfo de la Huerta was President of Mexico; the second time from the 1st of February, 1922, until the end of November, 1923, and the third time when Calles was President. I was Minister of the Interior until September, 1925. I was nominated Minister Plenipotentiary to Switzerland, and later was Minister Plenipotentiary to Belgium, and in 1925 I left the Interior Department to go to England as Minister from Mexico, and stayed in England until 1929.

I am familiar with the law of Mexico governing titles to land. I am licensed to practice law in Mexico, and have practiced law in every State in Mexico.

Referring to Exhibit No. 4, the background of the ownership of land in Mexico is this: Before Mexico gets independent from Spain all of the land originally belonged to the King of Spain. After independence, after they conquered the country the representatives of the Federal Government claimed always that the Federal Government or the Nation was the owner of the land originally,

and it was the Federal Government of Mexico that gave concession of the land to the persons, but the practice, the Federal Government gave possession to the Governor of the State to give and make all concession in order to give concession, and in fact the Government of the State gave concession to the parties and later the Federal Government ratified this concession. I find this instrument in harmony with this practice. In reading this instrument I found that the Governor of the State of Chihuahua gave concession of the land to the interested parties, and the later Government ratified or confirmed this concession. This concession is signed by Fernando Leal. I didn't know Fernando Leal, but I have seen his signature to many titles of land. At the time he signed this instrument he was the Commissioner of Agriculture and Fomento. Under the law of Mexico the Secretary of State in any department signs, in granting a concession, by afford of the President. The Minister of Agriculture and Fomento has the right, authority and jurisdiction to sign in the name of the President.

ON CROSS EXAMINATION:

The paper referred to in this instrument is a public instrument issued by the Secretary of the State with jurisdiction, by accord or order of the President. The practice was this: The Governor of the State in which the land was located gave the preliminary concession to the owner, to the party; later the Federal Government confirmed or ratified this grant. This paper just makes reference to the act of the Federal Government ratifying a concession already granted by the State to the interested party. Back of this instrument there should be a grant of title. This instrument shows that the Governor of the State has granted land, and the Federal Govern-

ment through this instrument ratified this grant. In order to show what that title was it should be accompanied by this grant that it purports to ratify.

In all of these granting land in Mexico we have very irregular practice, almost never in the granting or specications of the lines of the borders of the land granted. I have seen many titles that say just 35 or 40 sitios, they don't say the exact line or plans; they say the interested party or company will make measure, will make a plan and present later. This is a very inconvenient practice, but in fact it is the practice in Mexico, and that is the reason why there are many suits or many disputes now in regard to the lines separating two properties.

It is the practice today, perhaps no more than twenty-five or thirty years, that in making a location, plan, survey or map, of the land granted would be embraced in the act or instrument by the Government allotting or granting the land to a man. Before this time all of the granting was in this very irregular form, just gave so many square miles, or so many leagues, beginning from this point, to this point. For instance, here in the State, according to this plan I have shown, they fix one point in the center of the Rio Bravo called so and so, and from this point one, two, or three leagues, or so many leagues or miles to the south, just give the essence of the extension of the lines, but never have the practice to make a careful and detailed plan, or give all the elements to make this plan perfect. A concession is generally given to a company that was called Compania Deslindadora de Terrenos, a corporation, to make the lines of the property, survey that property, and a concession given to this Compania Deslindadora de Terrenos granting to the company the land that will be free covering this survey, and this Compania Deslindadora de Torrenos works, surveying in the State of Chihuahua and other States, fixing exact

lines, and where that company made the survey they present the survey to the Federal Government to approve and grant to that company all exceeding land that has been included in this property. That shows why they make this survey afterwards. That was done under the administration of President Diaz, and before. This was very irregular. General Diaz started as Governor in 1884, but a few years before he was regulator of this proceeding. Prior to that time the Compania Deslindadora de Terrenos had authority from the Government, and was at the same time a kind of representative of the Federal Government, and a kind of interested party to the land they could find free. That was subsequent to 1884. Prior to that time I shall say that not all cases, but in many cases, no public official intervened to give possession; the party took the points and sometimes took possession of three or four times the land granted, and that is why the Compania Deslindadora de Terrenos came later and took possession of the land taken without right.

The abbreviation "Gmo" S. Seguin is Gullermo S. Seguin, a son of General Juan M. Seguin. He was official mayor of the Minister of Agriculture and Fomento. Official mayor corresponds to Second Assistant Secretary. I knew Mr. Seguin in 1923. At that time he was a man about thirty-eight or forty. He held some position in the consular service in Mexico before. I don't know whether he is still living. The *land* time I saw him was when I left for England in 1925.

ON REDIRECT EXAMINATION:

This instrument under discussion, marked plaintiffs' Exhibit No. 4, is, under the law and customs in Mexico, a valid miniment of title, in the way that the confirmation of the granting of the concession to the owner of the

land was considered in Mexico always, the Federal Government and the State, acting as representative of the Federal Government. This makes the concession perfect, because it is representative of the owner.

Plaintiffs offered in evidence Exhibits Nos 6 and 7, being Spanish deed of sale of La Santisima by the heirs of Laureano Munoz to Ignacio Macmanus, dated June 1, 1886, and No. 7 being the English translation of the same.

> COUNSEL FOR DEFENDANT: We object on the ground that there is no adequate or sufficient description and identity of the land to identify the land which is the subject matter of the conveyance, and that it contains references to the administration by which these heirs derived their rights from their ancestor, Licenciado Laureano Munoz, but they do not purport to set them out, and that would be the best evidence of their contents of the rights of the parties.

The English translation, marked "P-7", is in words and figures as follows:

P. 7

GENERAL NOTARIAL
FILE
CHIHUAHUA

* * * *

THIRD "TESTIMONIO"

* * * *

(CERTIFIED COPY)

OF THE INSTRUMENT OF SALE OF LAND, KNOWN AS "LA SANTISIMA", LOCATED IN BRAVOS DISTRICT OF THIS STATE, EXECUTED BY

MRS. VENTURA REVILLA WIDOW OF MUNOZ AND HEIRS OF LICENDCIADO LAUREANO MUNOZ, IN FAVOR OF MR. IGNACIO MACMANUS.

CHIHUAHUA, JUNE 15, 1923

• • • •

In the margin: documentary stamps duly cancelled and the rubric of the subscribing Notary Public. In the center:

NUMBER FORTY ONE. In the City of Chihuahua on the first day of June eighteen hundred eighty-six, before me, the subscribing Notary Public and witnesses, who will hereinafter testify, appeared as one party Mrs. VENTURA REVILLA WIDOW OF MUNOZ, Messrs Doctor LUIS G. RAYMUNDO, Licenciado CARLOS y LEONARDO all bearing the surname Munoz y Revilla, and the Misses TRINIDAD, JESUS, LUZ with the same surname and Messrs. BALTAZAR MUNOZ and ENRIJQUE ESPERON: The former as temporary guardian and in legal representation of the minors, the Misses Ana, Carmen and Maria all bearing the surname Munoz y Revilla, and the second also as temporary guardian or administrator of the minors; and as the other party, Mr. IGNACIO MACMANUS, all of legal age and residents of this Capital; who, I certify, are known to me, and the first parties stated: That as the lawful and sole heirs of Licensiado Laureano Munoz, the young ladies Ana, Carmen and Maria represented by Mr. Baltazar Munoz and all the other Messrs. and Misses Munoz y Revilla and Mrs. Ventura Revilla de Munoz are owners of and hold possession of those lands known under the name of La Santisima, situated on the right bank of the Bravo River, and having arranged by agreement upon the sale to Mr. Ihnacio MacManuua of this vicinity, instructed the res-

pective action in the Second Court of Letters of this City, the file of which is added to the Appendix in an authorized copy, will be inserted in the "testiminio" (certified copy) of this instrument and contains a judicial dedree which reads literally: "Chihuahua, May twenty-eight, eighteen hundred eighty-six. Whereas these proceedings of Voluntary jurisdiction, instituted by Mrs. Ventura Revilla de Munoz for the purpose of verifying the consistency and utility of the projected sale of the portion represented by the Misses Ana, Carmen and Maria Munoz y Revilla in the ownership of the lands known under the name of "La Santisima" and situated on the right Bank of the Bravo River. CONSIDERING: That by the statements of the witnesses Juan N. Zubiran, Licenciado Manuel Prieto and Licenciado Pedro R. Prieto, it is clear and is notorious and evident that the sale as projected is of utility and profit and must so result to the minors, by virtue of all the circumstances in the case and especially in view of the price which is fixed for the property: that the temporary guardian and the Fiscal Agent or District Attorney were in agreement with the statements, or at least they have not set forth any contradiction thereto; that the price at which the experts appointed have valued said property is approximately the same fixed in the promise or offer of purchas... and sale to which the attorney in fact refers; that in accordance with Articles two thoudand one hundred thirty-five and the two following same, of the Code of Civil Procedure, this utility report has been shown the consistencey of perfecting said sale without auction, whcih must be carried out legally by virtue of having been instituted by the mother of the minors. In view of the above, the Judge of Letters who is presiding, interposes his authority and gives the necessary judicial litcense in order that the minors Misses Ana, Carmen and Maria Munoz y Revilla

may sell the portion which, undivided, they represent in said property of la "Santisima", for which their guardian and temporary administrator must intervene, and there shall be forwarded a copy of this proceeding to the Notary who must authorize the respective public instrument of sale for the legal effects thereof. Let notification be given; So ruled the Second Judge of Letters of the Judicial District of Iturbide and he signed with the attendant witnesses. To which we certify. J. L. Ullor. Rubric. Wit. Romon Trejo. Rubric. Wit. Enrique Armendariz. Rubric." That the Judge in his judicial decree states that the sale must be made legally without auction in accordance with the Articles two thousand one hundred thirty five, two thoudand one hundred thirty six and two thousand one hundred thirty seven of the Code of Cicil Procedure. In accordance with the decree of the Judge, the Guardian of the minors, Misses Ana, Carmen and Maria Munoz y Revilla, Mr. Baltazar Munoz, by agreement with the *adminstrator* Mr. Enrique Esperon, in lawful representation of the said minors, Mrs. Ventura Revilla de Munoz, Messrs. Doctor Luis G. Raymundo, Licenciado Carlos y Leonardo, the Misses Trinidad, Jesus and Luz, all bearing the surname Munoz y Revilla acting for themselves, have agreed to enter into a contract of sale with Mr. Ignacio Macmanus, for the said la "Santisima" lands, and to carry out the contract in the most lawful manner and form, and they execute same on the following grounds and according to the following clauses:—FIRST—Mrs. Ventura Revilla de Munoz. Messrs. Doctor Luis G. Raymundo, Licenciado Carlos y Leonardo, the Misses Trinidad, Jesus, Luz, Ana, Carmen y Maria, all being Munoz y Revillas, the three latter represented by their temporary guardian, Mr. Baltazar Munoz in agreement with their administrator, Mr. Enrique Esperon, transfer by absolute sale and perpet-

ual alienation, with all their uses, rights of way, water concessions and permanent rights or privileges, to Mr. Ignacio Macmanus the lands owned by them known under the name of La "Sabtisima", situated on the right bank of the Bravo River on a zone or belt of two leagues of latitude, from the Old Presidio to the ruins of the Pilaresm commencing on the bank of the said river; which lands belong to them by intestate inheritance from their deceased father, Licenciado Laureano Munoz, who acquired them by adjudication made in his favor by the State Government under date of October thirty-one, eighteen hundred fifty-nine and ratified by the Minister of Fomento on November twenty-nine, eighteen hundred sixty-four as is shown by the respective title, which I certify to have before me in ten legal sheets.—SECOND—The price, just and agreed to between the executing parties, for the lands which are sold, is one hundred thousand pesos in the Mexican Eagle silver, which will be paid in this city in the following manner: twenty-five thousand pesos in this proceeding, to the delivery and receipt of which, I, the subscribing Notary certify, same having been made in my presence and in the presence of the assisting witnesses: twenty thousand pesos in six months, twenty thousand in a year and thirty-five thousand in eighteen months, the three latter terms being counted from the date of this instrument, and according as they continue making the above payments or installments, there will be executed the corresponding receipts before a notary, and the respective annotations will be made in the mortgage section. In order to guarantee payment of the amounts that must be delivered in the installments designated in the above clause, the lands which they are selling will carry special mortgage in favor of the sellers; and if for any reason the purchaser, Ingacio Macmanus may not be able or may not desire to pay, within the pe-

riods designated in the above clause, any or all of the amounts fixed therein, he will lose to the benefit of the sellers the amounts that he may have paid in, without the right to claim anything against them, and for such reason, this contract remaining of no further force and effect. FOURTH—All expenses required for the transfer of ownership of the lands which are being sold, such as stamps, taxes, fees, etc. shall be for the account of the purchaser.—FIFTH—The sellers relinquish all claim to the ownership and dominion which they have held and now hold in the said lands, ceding and transferring all to the purchaser, that he may use same as the lawful and absolute owner, verifying such ownership by the "testimonio" (certified copy) of this instrument which they consent shall be given for his security and declaring that the said lands are not alienated, mortgaged or encumbered in any other manner: transferring them with this understanding and binding themselves to eviction and indemnification of this contract in manner and in conformity with law.—SIXTH—The purchaser receives in this proceeding, in eight legal sheets, a certified copy of the titles of ownership, and other documents relative thereto (including a map made by the Land Surveying Company, Jesus E. Valenzuela y Socios.) of the lands sold herein, reserving delivery to him of the original titles, for such time as the final payment may be made: being consummated by virtue of this act, transfer of full ownership and its delivery verified, in conformity with Articles one thousand five hundred fifty-two, one thousand six hundred thirty-six and two thousand nine hundred eighty-three of the Civil Code, unless this contract should be rendered null in accordance with the final part of the Third Clause herein.—SEVENTH—The purchaser, Mr. Macmanus accepts this instrument in all its parts. Finally, the parties hereto declare that in this agreement

there does not exist the injury or wrong provided of in Article one thousand seven hundred seventy-two of the said Civil Code, but if in the judgment of the experts there may later be anything pertaining thereto, they reciprocally make free gift and absolute donation thereof, renouncing that which in this sence is provided in Articles one thousand seven hundred *six-ty* four and three thousand twenty-three of the Code last mentioned, the provisions of which consist in the power to rescind the contract by reason of lesion or injury, and the term for entering their action. In a compliance with all set out above, the parties hereto sign and the guardian and administrator also sign, likewise the minors whom they represent. They fully understood that there must be taken a memorandum of this instrument in the Public Registry of Bravos District according to Law. The witnesses were Francisco Dominguez and Jesus Garcia Pena, of adult age, present and residents of this city. To which I certify, Ventura R. V. de Munoz. Luis S. Munoz. Luz Munoz. Ing. Macmanus. Leonardo Munoz. Ana Munoz. Carmen Munoz. Maria Munoz. Franco Dominguez. Eque. Esperon. J. Garcia Pena. Romulo Jaurriets. N. P. Rubrics. The authorizing seal of the Notary. "Licenciado JESUS L. ULLOA, Second Judge of Letters of Iturbide District, CERTIFIES: That on file number 22 kept in this Court for the purpose of the permit requested by Lic. Carlos Munoz to sell lands of minors, there are found the following documents in evidence: "A fifty-cent stamp duly cancelled. Second Judge of Letters. Carlos Munoz, resident of this Capital with dwelling at numbers seven and nine Libertad Street, before you, in conformity with lawful procedure, I appear, stating: That according as is shown in the attached public instrument, which I expect may be delivered to me after taking the relative memorandum, I am

general attorney in fact (with most ample powers) for my mother, Ventura Revilla, Widow of Lic. Laureano Munoz; that she and her children, among whom are three minors, namely Misses Ana, Carmen and Maria Munoz y Revilla, we being the owners of undivided interests in lands known under the name of "La *SANTIMISA*" and situated on the right bank of the Bravo River, in this State, which up to this time are almost non-productive by reason of the fact that we have not surplus capital in cash to meet the numerous expenses which the establishment of a real hacienda on those lands would require, and for that reason we desire to sell them and we have entered into a private contract which contains a promise of sale under favorable conditions, which can be well understood from the fact that there has been fixed as the price the sum of ONE HUNDRED THOUSAND PESOS, payable in eighteen months; that a judicial permit being *necessary in order that the said minors may sell* the portion which they represent in that property, in the name of my mother, who (according to Artsl 393 and 400 of the C. C.) exercises jurisdiction over same and is its lawful representative and legal administrator of the properties belonging to the estate, I appear before your Honor proving that such license be conceded previous to the procedures set out in Articles 2155, 2156 and 2157, of the Code of Civil Procedure, in order that I may immediately appoint (in agreement with the minors who sign this by way of ratification)—Mr. Baltazar Munoz as temporary guardian, and Mr. Enrique Esperon also as temporary administrator, trusting that the Court will deem proper to admit and confirm those appointments; and finally I present Messrs. Juan N. Zubiran, Lic. Manuel Prieto and Lic. Pedro R. Prieto, that they may be pleased to state whether they consider that contract evidently useful and advantageous for my said minor sis-

ters, and I pray that you kindly appoint in due time two disinterested persons and land experts, familiar with the land, that they may value same without the necessity of visiting it, I make the necessary protestations. Chihuahua, May twenty-sixth, eighteen hundred eighty-six. Carlos Munoz, Rubric. Carmen Munoz. Maria Munoz. Chihuahua, May twenty-six, eighteen hundred eighty-six. Presented with the power of attorney, a memorandum thereof will be taken and it will be returned. Let there be summoned the guardian and the Administrator appointed that they may say whether they accept. their respective offices, and according to their answers, it will be decided. So decreed the Second Judge of Letters of this Judicial District, ordering that the attorney be notified and he signed with the attendant witnesses. To which I certify. J. L. Ulloa. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Rubrics. On the same day, Lic. Carlos Munoz being notified of the above decree, he said: that he agrees to same and signs. To which I certify. Ulloa. Rubric Munoz. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Rubrics. Thereupon it was shown and the Judge certified that the power presented was executed by Mrs. Ventura Revilla de Munoz for herself and representing her minor children Leonardo, Ana, Carmen and Maria, and for the adults, Dr. Luis G. Munoz and the Misses Trinidad, Jesus and Luz, all Munoz y Revillas, in favor of Lic. Carlos Munoz, before the Notary Public Manuel A. Vidal on June twenty-fifth, eighteen hundred eighty-four, which power is general full and sufficient for pleadings and collections, containing all the customary clauses, and having been acknowledged by the attorney in fact on the day following its execution. For due verification, this memorandum is made, which the said Munoz signs, as proof of receipt of said public instrument, which is returned to him. To

which we certify. Ulloa. Rubric. Munoz. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Rubrics. On the twenty-seventh of the same month, Mr. Enriquw Esperon being notified of the above decree, said: that he accepts the trust and makes oath to faithfully discharge same and he signed. Ulloa. Rubric. Eque Esperon. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Rubrics. On the twenty-seventh of the same month, Mr. Baltazar Munoz having been notified of the above decree, said: that he accepts the trust and makes oath to faithfully discharge same, and he signed. Ulloa, Rubric. Baltazar Munoz, Rubric. W. Ramon Trejo. W. Enrique Armendariz. Rubrics. Chihuahua, May twenty-seven, eighteen hundred eighty-six. Where in view of the acceptance and oath of the guardian and administrator of the minor Munoz young ladies, these presents serve as an order appointing them as requested by Lic. Carlos Munoz. Let the information be received through citation by the Public Minister, for which purpose a hearing was set for this day at four o'clock in the afternoon. Let notification be given. So decreed the Second Judge of Letters. To which I certify. Ulloa. Rubric. W. Ramon Trejo. W. Enrique Armendaris. Rubrics. Immediately upon being informed, Mr. Baltazar Munoz said: that he is informed and he signs. Ulloa. Rubric. Baltazar Munoz. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Rubrics. The Fiscal Agent being informed on the same date, signed. Ulloa. Rubric. Amparan. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Rubrics. Lic. Carlos Munoz. being notified signed. To which we certify. Ulloa. Rubric. C. Munoz. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Repubrics. On the same date at four o'clock in the afternqon, there being present in the Court the District Attorney, Guardian ad litem and general attorney in fact, Carlos Mu-

noz for the purpose of carrying out the investigation, for which proceeding citation had been made appeared Juan N. Zubiran, and having made oath, he stated: that his generalities are as follows: that his name is as already given sixty years of age, married, a minor and resident of this city, and that the general matters of law pertaining to his summoners do not interest him. Being asked as to whether he considered the projected sale of notorious and evident utility, of the portion which the said Munoz minors represent as co-owners of the Lands of La Santisima, according to the instrument presented by the district attorney, he said: that in his conveption, the profit that would result from the sale of the lands in question, is notorious or publicly known, in favor of the minors and that he believes that it is better that said sale be *amde* at private sale and not at public auction because the price that might be had for those lands if they were sold at auction, would be diminished one third at least; that those lands produce nothing at this time, while the capital on deposit would produce as well known interest which would tend to benefit in an absolute manner the said minors, considering that property never has produced interese. Thus he stated and same was signed by him together with the Judge and acting witnesses. To which we certify. Ulloa, Rubric. J. N. Zubiran. Rubric. Baltazar Munoz. Rubric. W. Ramon Trejo. W. Enrigue Armendariz. Rubrics. Immediately, Lic. Manuel Prieto being present and having taken the lawful oath, stated: that his name is as mentioned, A Lawyer, of adult age and with domicile at Number twenty Morelos Street. Questioned as to the points set out in the writing presented by Lic. Carlos Munoz, he answered: that in his opinion, it is evident that profit will result to the minors, Ana, Carmen and Maria Munoz y Revilla by carrying out the sale of the lands known under the

name of La Santisima, which they have agreed to with the other co-owners for the price of one hundred thousand pesos payable in eighteen months by installments. That the reason for his statement is founded on the friendly relations and relationship which bind him to the sellers, he knows that the rural property on process of aliencation has not, neither will it produce any profit for them, that neither have they the capital in cash which may be necessary to successfully exploit the property in question, while the considerable sum which is offered as the price will give them an interest of importance. That consequently he believes that the permit requested should be granted unless it may be necessary that the sale be made by public auction when two experts will be appointed who will fix the value in agreement with the provision of Article 2136 of the Code of Civil Procedure. Thus he stated and signed with the Judge and the acting witnesses. To which we certify. Ulloa. Rubric. *Mannal* Prieto. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Rubrics. Thereupon, Lic. Pedro R. Prieto being present and interrogated, he stated as his generalities: that his name is as mentioned, thirty one years of age, lawyer, resident of this City, with domicile at Number fourteen Avenida de Heroes, and without relationship neither interest direct or indirect in the business which is being considered with his summoners, nor with any other person, A question with relation to the alienation considered in the above writing, he said: that in his opinion the said alienation is profitable and advantageous to the minors, Misses Ana, Carmen and Maria Munoz, as well as to the other co-owners, because the product from the sale will supply them with a good rental, while the lands being alienated have never produced anything, that although said lands might be productive through cultivating them, this will not happen so long

as they belong to the Messrs. Munoz, or at least it would be very difficult for them because for that it would require the investment of a large sum of which the deponent knows they would not be able to dispose, but even in case they might be able to obtain money for exploiting those lands, they would never do so because the Messrs. Munoz are devoting themselves to carrying on of their scientific professions and it would not suit them to devote their time to farming as a business with which they are not familiar. That the reason for his statement (for his statement) is based on the fact that for that many years he has entertained intimate and friendly relations with the Munoz family, as well as with their deceased father Leaureano Munoz; that he also believes that authorization for the sale will be very beneficial to them, other than by public sale, because in the latter manner no one might give the amount of one hundred thousand pesos and once put up at public auction it would have to be sold for a lesser amount, because for contracts like the one in question, well known as are the capitals or holdings of the State, it is very probable there might not be many bidders. This he said, and having been read to him the above declaration therein, it was affirmed and ratified, he having made oath that he spoke the truth in what he proviously executed, signing with me, the Judge and the acting witnesses. To which we certify. Ulloa. Rubric. P. R. Prieto. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Baltazar Munoz. Rubrics. Chihuahua, May twenty-seventh, eighteen hundred and eighty-six. This Court knowing that Miguel Larrea and the American Tomas Dayle are fimiliar with the lands in question, he appoints them as expert appraisers of lands, to which end they will be at once summoned. Let notification be given. So decreed the Judge and signed with the witnesses. To which I certify. J. L. Ulloa. W. Ra-

man Trejo. W. Enrique Armendariz. Rubric. Lic. Carlos Munoz being notified of the above decree, signed. To which I certify. Ulloa. Rubric. C. Munoz, Rubric. W. Enrique Armendariz. W. Ramon Trejo. Rubrics. On the same date being informed of the above decree, Mr. Tomas Dayle said: That he accepts the office and makes oath to discharge same faithfully. The proceeding continuing, Mr. Dayle made oath to tell the truth as to what he might know, and might be questioned, stating that his name is as mentioned, twenty-nine years old, single, and a resident of this Capital, by profession a Land Surveyor, native of Philadelphia, and that he has no concern as to the general legal matters of the Messrs. Munoz. Questioned as to whether he is acquainted with the lands of La Santisima situated on the right bank of the Bravo River and what value they may represent, he said: That he is perfectly familiar with the lands as to which he is interrogated, by virtue of having measured them as Surveyor of the Compania Deslindadora—Surveying Company—about two years ago, and moreover from having also measured the lands on the left bank of the said River, about four years ago; that the value of said lands will be ninety-five or one hundred thousand pesos, taking into consideration the circumstances or quality of same and at the price upon which lands at the present time are valued in general. This he stated and signed after having ratified the present statement which was read to him in the presence of the guardian, who also signs. Ulloa. Rubric. Thomas T. Dayle. Rubric. Baltazar Munoz. Rubric. W. Enrique Armendariz. W. Ramon Trejo. Rubrics. On the twenty-eighth day of the same month, Mr. Miguel Larrea being present in this Court, he was informed of his appointment as expert appraiser which has reference to the decree dated yesterday and he said: That he accepts the trust making

oath to discharge same faithfully and lawfull. Being interrogated, having first made legal oath in due form, he stated that his name was as written, thirty-eight years of age, married, native of Satevo and a resident of this Capital. Questioned as to whether he is familiar with the lands of La Santisima, situated on the right bank of the Bravo River, he said: that he knows the said lands by virtue of having gone over them making a survey of the "baldios" or public lands of Bravos District, as representative of the concessionary Company, "Jesus E. Valenzuela y Socios"; that the value of said lands should be ninety five thousand pesos, taking into consideration the character of same and the prive at the present time of lands in general. Thus he stated and signed after having ratified the statement herein which was read to him in the presence of the guardian who also signs. To which I certify. Ulloa. Rubric. Miguel Larrea. Rubric. Baltazar Munoz. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Rubrica. Chihuahua, May twenty-eight, eighteen hundred eighty six. In view of these proceedings of coluntary jurisdiction, instituted by Mrs. Ventrua Revilla V. de Munoz, represented by Lic. Carlos Munoz, for the purpose of verifying the suitability and utility of the projected sale of the *prtion* which the Misses Ana, Carmen and Maria Munoz y. Revilla represent in the ownership of the lands, known under the name of "La Santisima" and situated on the right bank of the Bravo River. Considering: That by the Statements of the witnesses, Juan N. Zubiran, Lic. Manuel Prieto and Lic. Pedro R. Prieto, it appears that the profit and advantage is notorious and evident and will so result to the minors by reason of all the circumstances in the case and especially taking into consideration the price fixed for the property; that the temporary Guardian and the District Attorney agreed to those statements, or al least

they have presented no opposition; that the price at which the experts have appraised said property is approximately the same as fixed in the promise of purchase and sale to which the attorney is fact refers; that in conformity with Articles two-thousand one hundred thirty-five and the two following of the Code of Civil Procedure, this investigation as to utility has been carried out, in which on the part of the witnesses is shown the property of perfecting said sale otherwise than by sale at auction, as should be done lawfully by virtue of same having been instituted by the mother of the minors. In view of the foregoing, the Judge of Letters who is presiding, interposes his authority and grants the necessary judicial permit or license in order that the minors, the Misses Ana, Carmen and Maria Munoz y Revilla may sell the undivided portions which they represent in the ownership of the said La Santisima for which their guardian and temporary administrator will intervene and there will be forwarded a copy of this file to the Notary who must authorize the respective public instrument of sale for legal purposes. Let notification be given. So decreed the Second Judge of Letters of the Jucicial District of Iturbide and he signed with the acting witnesses. To which we certify. J. L. Olloa. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Rubrics. On the same day at half past five in the afternoon, Lic Carlos Munoz was notified of the above decree, and he said. That he agrees and he signs. To which we certify. Ulloa. Rubric. C. Munoz. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Rubrics. The proceeding being continued and Baltazar Munoz informed of the above resolution said: That he agrees and signs with the Judge and the acting witnesses. To which we certify. Ulloa. Rubric. Baltazar Munoz. Rubric. W. Ramon Trejo. W. Enrique Armendarez. Rubrics. Thereupon Enrique Esperon be-

ing informed of the above resolution, signed. To which we certify. Ulloa. Rubric. Enrique Esperon. Rubric. W. Ramon Trejo. W. Enrique Armendariz. Rubric. and by virtue of the order in the above inserted decree, this "testimonio" is issued in seven legal sheets with the proper stamps, faithfully compared with its original and authorized in Chihuahua on the thirty first day of the month of May, eighteen hundred eighty-six. J. L. Ulloa. W. Ramon Trejo. W. Enrique Armendariz. Rubrics. No. 283. Ventura Revilla de Munoz and Childred delivered on this date six hundred twenty-five $625.00 Pesos of full weight for fees which accrued and were charged to the following branches: A. Excise tax fee, S. Liquidation approving. Execution of instruments for the sale of the lands known as La Santisima situated in the Bravos District, in favor of Ignacio Macmanus, for the amount of one hundred thousand pesos $500.00. 25% Federal Tax $125.00 Equals $625.00. Chihuahua, June 5, 1886. Exaristo Hernandez. Rubric. The interested party signed the stubb upon receiving this. Compared. Francisco Garcia. Rubric.

TAKEN FROM ITS ORIGINAL, CORRECTED AND COMPARED IN SEVEN LEGAL SHEETS CONTAINING THE LAWFUL STAMPS, FOR USE OF MR. CHARLES DAVIS, THIS BEING THE THIRD "TESTIMONIO": WHICH I AUTHORIZE AND SIGN IN MY CAPACITY AS OFFICER IN CHARGE OF THE GENERAL NOTARYAL FILES IN THE STATE, IN THE CITY OF CHIHUAHUA, ON THE FIFTEENTH DAY OF THE MONTH OF JUNE NINETEEN HUNDRED TWENTY THREE: HAVING FIRST TAKEN THE PRESS COPY AS REQUIRED BY LAW AND HAVING USED INDELIBLE INK. TO WHICH I CERTIFY.

(SIGNED) RAFAEL FEBIEN LICORAL
(Rubric)

SEAL READING:
"GENERAL NOTARIAL FILE
CHIHUAHUA."

TRANS.
JEMH.

Exhibit No. 6, of which No. 7 is an English copy which has just been read, is, under the law and customs and usages in land matters in Mexico, a valid muniment of title. This title is a perfect contract, because of the validity of the contracts are four; first, the capacity of the contracting parties; second, mutual consent; third, that the object of the contract must be *lega*; and, fourth, that the contract will be executed with the formalities prescribed by the law. In this case the legal capacity of the contracting parties is very well proved, and shows here, because the seller was the heir of the person you call here an administrator, and is legal representative of all interests of the possession. It appears also the minor daughter of the widow, the minor sons and daughters of the widow, and the lack of formality to make the contract has been covered, all angles or prescriptions of the law, in order to give to the minor children the legal representation, guardian ad litem, tutor is the legal representative of all the minors, and in this all angles of the law have been covered to give the name tutor, or guardian ad litem, to the person to represent this person in contracts. And it is also necessary to prove, according to law, at this time the contract or act will be convenient to the interest of the minor person, and it has been proved there; that agreement or selling was convenient to the interested minor person. From this consideration I

show legal capacity of the contracting parties were perfectly all right. The mutual consent, the second requisite to the validity of the contract, appears clearly expressed in the same contract. The consideration was legal, because in Mexico, and the formalities of the contract having been executed in Mexico, and the State of Chihuahua, before the last reform if the price was less than 500 pesos, which we make in private writings, and if the price was more than 500 pesos it must be before a notary public, and changed the 500 pesos to 3,000, and my opinion is this in regard to the title, any irregularity or effect that could be in the title to this time has been absolutely covered by prescription.

In Mexico you can acquire by possession or prescription, if a person had acquired by possession, and by possessing it for ten years their possession will be found in good title; second, that possession will be public; third, of good faith, specific, and uninterrupted possession. This land was sold by the State of Chihuahua to the first owner in '59, and this concession ratified by the Federal Government in 1864, and the owner took possession of the land, and had possession from 1864 to 1886, more than twenty years, and in ten years time possession in this condition any defects of the title have been absolutely covered by prescription, according to Mexican law.

ON RECROSS EXAMINATION:

At the date of this instrument the State of Chihuahua did not have a Civil Code. The Civil Code of Chihuahua was established in 1898. The first Civil Code in Mexico was in 1870, for the Federal District. Before 1870 all civil law in Mexico was Spanish law. We apply to our practice all Spanish practices for courts in Mexico, and that was at the same time coming from Roman law. In

1870 the first Civil Code was approved, and later the State made its Civil Code.

According to the Code then in force the instrument first must show they had capacity to contract. It is not absolutely necessary they set that out in their deed. The parties that are interested must prove they don't have it in order that the contract must be invalid, they must prove the parties have not legal capacity. The next is mutual consent of the contracting parties, the meeting of the mind, one person proposes to sell the thing and the other person to buy. The instrument shows that.

In Mexico when the Court names an administrator in any proceeding the Court gives the administrator power to act. It is an obligation of the notary public in Mexico to demand that a person present to the notary public his character.

Q. Is that also true about the man that accepts the title, he must appear?

A I must make a difference in this case, distinction in this case. The distinction consists of a contract between the Government and a person. In this case the man has nothing to do in regard to accepting. When the Government grants title to any man or anything the instrument recites in view of the fact that Mr. So and So has covered all conditions to acquire this property I grant to this person this property according to the terms of the law. That is just the power of the Government, don't need any acceptance. It is a contract between personal or particular parties in this case, sale, and accepted in Mexico.

And that is the reason the deed contains this provision that Mr. Macmanus appears. And the reason I take the authority of the executor and guardian to exist, when

he recites it exists, is because it was his legal duty to ascertain that, and the opportunity for the Fiscal Agent or District Attorney to object. The District Attorney has the obligation as representative of the society to take care of such matters, and the District Attorney gave his agreement to the proceeding; that proves to me everything was covered. The other way the District Attorney, representing the society, will object to the contract.

I don't mean to testify that I had any personal knowledge whether the people had possession in the instant case. I am only stating the law as I understand it to be.

If there was an earlier edition of the Civil Code of Chihuahua than 1898 I have not seen it. All Codes of the States were copied, with their legal variations, from the Code of the Federal District, and the first Code was adopted in 1870. The law which prevailed in any State prior to the time it adopted a Code was the Spanish law. But we had the Federal Constitution established in 1857. We have several Constitutions. We did not have a special codification in Mexico until 1870, and just continued the practice established by the Spanish Code, by the Spanish practice.

I made a mistake. The Code in Chihuahua was enacted in 1888, and is still in force with very little codification, wars, murder, and civil corporation.

Plaintiffs introduced in evidence Exhibits 8 and 9; 8 being Spanish document showing recording in Juarez, Chihuahua, Mexico, June 10, 1886, of sale of La Santisima by the heirs of Laureano Munoz to Mamanus, and No. 9, English translation of same. Exhibit "P-9" being in words and figures as follows:

P-9

In the margin: Stamps duly cancelled—In the Center.

"LICENCIADO JOSE A. LUJAN, JUDGE OF THE CIVIL COURT OF BRAVOS DISTRICT, FOR ADMINISTRATION OF THE LAW, IN CHARGE OF THE PUBLIC REGISTRY OF THE PROPERTY OF THIS DISTRICT, CERTIFIES: THAT IN BOOK NUMBER I—OF SAID REGISTRY, RELATING TO THE FIFTH OF SEPTEMBER, EIGHTEEN HUNDRED EIGHTY FOUR 1884, TO THE SIXTEENTH 16th DAY OF DECEMBER EIGHTEEN HUNDRED EIGHTY NINE 1889, THERE IS FOUND THE COPY OF AN INSTRUMENT OF THE FOLLOWING LITERAL TENOR: ————————

————————"Sale of "LA SANTISIMA" Lands, by the heirs of Lic. Laureano Munoz, in favor of Ignacio Macmanus, for $100,000.00—

RURAL PROPERTIES:—At eleven O'clock in the morning of the tenth day of the month of June, eighteen hundred eighty six, there appeared in this Town of Paso Del Norte, at the Court of Letters of this Judicial District, Lic. Carlos Munoz, by virtue of the fact that the Judge who subscribes hereto is in actual charge of the registers of Property and of Mortgages, and the said Munoz, stated: that he presents the "testimonio" (certified copy) of an instrument of sale which, at the same time, covers a mortgage, the sale being of the lands known as "LA SANTISIMA" situated in this District, the sale having been executed by the heirs of Lic. Laureano Munoz in favor of Ignacio Macmanus, the judicial permit first obtained by the party representing the minor children of the said Munoz; that the contract referred to is executed under the following clauses: First Mrs. Ventura Revilla de Munoz, Messrs. Doctor Luis G. Raymun-

do, Licenciado Carlos y Leonardo, the Misses Trinidad, Jesus, Luz, Ana, Carmen and Maria, all being Munoz y Revillas, the last three represented by their temporary guardian, Mr. Baltazar, Munoz, in agreement with their administrator, Mr. Enrique Esperon, give in absolute sale and perpetual alienation, with all their uses, rights of way, water concessions and permanent privileges, to Ignacio Macmanus, the lands which they own known under the name of —"La Santisima", situated on the right bank of the Bravo River on a zone or belt two leagues in latitude, from the Old Presidio up to the Pilares mines, commencing on the shores of said river; which lands belong to them by intestate inheritance from their deceased father, Licenciado Laureano Munoz, who acquired them by adjudication made in his favor by the Government of the State, under date of October thirty first, eighteen hundred fifty nine and ratified by the Minister of Fomento on the twenty ninth of November, eighteen hundred sixty four, as is evidenced by the respective title which I certify to have before me in ten legal sheets.—Second. The price, just and agreed to, by the grantors, for the lands sold, is ONE HUNDRED THOUSAND PESOS in Mexican Eagle Silver, which will be paid in this city in the following manner; twenty five thousand pesos in this proceeding, delivery of the receipt for which, I, the subscribing Notary certify to have been made in my presence and in the presence of the acting witnesses; twenty thousand pesos in six months, twenty thousand in one year and thirty five thousand in eighteen months, the last three periods of time counted from the date of this instrument; and as they continue making the above payments on installments, there will be executed the corresponding receipts before a Notary Public and the respective annotations will be made in the Mortgage Office. Third.—In order to guarantee

the sums that must be delivered in the installments designated in the above clause, there are mortgaged especially in favor of the sellers the lands which are being sold; and if for any reason the purchaser, Ignacio Macmanus cannot or may not wish to pay at the times designated in the above clause, some or any of the amounts fixed therein, he will lose to the benefit of the sellers the amounts that he may have paid in without the right to reclaim anything against the sellers, and thereby this contract becoming null and void.—Fourth. All expenses required for the transfer of the ownership of the lands which are being sold, such as stamps, taxes, fees etc, shall be made for account of the purchaser.—Fifth. The Sellers are disposing of the dominion of and ownership which they have held and are holding in the said lands, ceding and transferring all to the purchaser, that he may make use of them as lawful and absolute owner, evidencing the ownership by the "testimonio" of this instrument which they agree to give to him for his security, and declaring that the said lands are not encumbered, mortgaged or in any manner alienated, transferring them with this understanding and binding themselves to eviction and indemnity of this contract in due form and according to law; Sixth. The purchaser receives in this proceeding, in eight legal sheets, a certified copy of the titles of ownership and other documents relative thereto (including a map prepared by the Surveying Company, "Jesus E. Valenzuela y Socios") of the lands which they are selling, reserving delivery of the original titles to them for such time as they may have made the last delivery; by virtue of the foregoing the transfer of the property, in full dominion, being consummated and its delivery verified in conformity with Articles one thousand five hundred fifty two, one thousand six hundred thirty six, and two thousand nine hundred eighty

three of the Civil Code, that this contract may not be without — due effect, in accordance with the latter part of the Third Clause hereof. — Seventh. — The Purchaser Maxmanus accepts instrument in all its parts. Finally, the contracting parties declare there is no lesion or injury foreseen in this contract as in Article one thousand seven hundred seventy two of the said Civil Code, but that if in the judgment of the experts there should be such, for the amount thereof, they *reciporacially* remit same, as a free gift to one to the other, renouncing all that in this sense is provided in Articles one thousand seven hundred seventy four and three thousand twenty three of the Code last cited, which conditions consist of the authority to rescind the contract by reason of lesions or injury and the term for instituting such action. In compliance with all the above etc., All the above is shown in the "testimonio", which has been presented in this Registry Office by Lic. Carlos Munoz, which has been certified, as there is set out at the foot of said "testimonio" a notation of its having been registered under Number Eight, the interested party signing, to whom said testimonio was returned in the number of sheets as contained. Carlos Muno*a*—Rubric———— This is a true and exact copy of the original and which is found on pages thirty eight 38 to forty two 42, of the Book which is issued at request of the interested party mentioned at the beginning, for the uses that to his interest may accrue, in Ciudad Juarez, Chihuahua, on the twenty first day of the month, of April, nineteen hundred twenty four ————

(Signed) J. A. LUJAN (Rubric)

Trans.
JEMH

Plaintiffs offered in evidence Exhibits 10 and 11; 10 being a Spanish document showing recording in Juarez, Chihuahua, Mexico, May 10, 1887, of sale by Ignacio Macmanus to Bennett H. Davis, and Exhibit 11 being English translation of No. 10; Exhibit "P-11" being copied herein.

COUNSEL FOR DEFENDANT: The only objection we have, we object to it again because it does not identify the land herein involved as being embraced in this land, and the instrument is irrevelant and immaterial.

Exhibit marked "P-11", being in words and figures as follows:

P. 11

Seal reading:

"COURT OF LETTERS
C. JUAREZ, BRAVOS DISTRICT
CHIH."

National Emblem in Circle.

Cost $8.00

I believe that they should bring the testimonio of the instrument executed in Mexico and register it for the part in respect to Vade de Piedras and San Antonio.

CERTIFIED COPY ISSUED AT REQUEST OF LICENCIADO JUAN N. AMADOR, OF THE RECORD OF THE INSTRUMENT OF SALE EXECUTED BY SENOR IGNACIO MACMANUS IN FAVOR OF SENOR BENNETT H. DAVIS.

Ciudad Juarez, October 27, 1910.

• • • •

The inscription or record is of the instrument dated December 6, 1886 executed before the Notary Jose M. Velazquez, with reference to various properties, but inscription or record only of La Santisima.

They ask if the Canton de Oginaga corresponds to this Registry Office.

In the margin: Stamps duly cancelled. In the center:

"Lcienciado Maciano Herrera, Substitute Judge of Letters of this District, and Officer in Charge of the Public Registry of Property, of Mortgages and of Commerce therein,

CERTIFIES: That in Book Number one (1), Register of Property, Section 1, and from folio fifty-nine (59) to seventy one 71, there is a record of the following literal tenor:

In the margin: "Number One—La Santisima Lands, and Vado de Piedras and San Antonio, which Ignacio MacManus sold to B. H. Davis. In the center: RURAL PROPERTY known as "La Santisima" situated in Bravos District on the right bank of Bravo River. It being eleven A. M. on the tenth day *fo* May, eighteen hundred eighty-seven. Bennett H. Davis, a citizen of the United States of America, having his domicile in El Paso, Texas, of adult age, a widower, lawyer by profession, with legal capacity, according to the statement of one who certifies the said Davis is known to him, presents for its registration in this Book of Property, the "testimonio" of an instrument, which he certifies that he has before him in six legal sheets with the corresponding stamps; to be executed in the City of Mexico on the sixth day of December, eighteen hundred eighty six before the Notary Public Jose Maria Velazquez, noting immediately by its date, not to be by chance included for the payment

of fees which accrue in this State on all contracts executed outside of the State on properties situated therein, according as is determined by the Treasury Law of January twenty-two of the current year, in its Article Six, fraction four by virtue of which it will be free from that payment for the records which relate to that instrument, and with that understanding Mr. Davis verifies same under his express responsibility, as being according to the tenor of the six clauses which it contains, as also of its parts as a whole, and of the testimonies of other instruments which are annexed to it, and in relation thereto, and of other official documents.

THOMAS MACMANUS, as legal representative of his brother Ignacio Macmanus, executed a contract of sale with Mr. Telesforo Garcia of the rural properties which will be hereinafter set out, this in favor of the said B. H. Davis, purchaser, represented by Mr. Garcia, and of the nature of a mortgage, with the understanding that the said Davis may ratify it by public instrument. By that contract Macmanus sold to Davis the Haciendo known as "La Santisima" located in Bravos District, together with two other rural properties which adjoin it and belong to Ojinaga District, all being on the right bank of the Bravo River, known as "Vado de Piedra" and the other "San Antonio", all three as farming lands with their relative areas, rivers, watering places, mountains, pastures, quarries buildings, as many are contained therein and rights of way controlling and serving, etc. as is shown by the original titles and furthermore and also the title to ONE THOUSAND THREE HUNDRED SIXTY HECTARES of land in excess of "Vado de Piedra" which are adjudicated to Ignacio MacManus on the eighth day of December Eighty six (1886). These three properties were sold as before said, for the amount of ONE HUNDRED TWENTY ONE THOUSAND PE-

SOS, as is shown by the second clause of the said instrument, of which sum the said Davis will acknowledge the amount SEVENTY FIVE THOUSAND PESOS on the said "La Santisima" Hacienda in favor of the heirs of Licenciado Laureano Munoz, resident of Chihuahua, to whom the property is acknowledged as belonging for six, twelve and eighteen months, counted from the first day of June last according to instrument dated the first of June of that year eighty-six, executed in the City of Chihuahua before the Notary Public Licienciado Romulo Jaurrieta; and the resident of the price which is FORTY SIX THOUSAND PESOS, MacManus declares and confesses that he has received previous to this proceeding from the hands of Mr. Davis to his entire satisfaction preparing for the same receipt given in that instrument without it being subject to later exception. By the Third and Fourth Clauses, they declare the price of the properties together with the renouncement of the right to lesson or injury, to be just; adding also, although it is not set out in the certificate, which should be first inserted in said instrument, that the properties mentioned are not sold, promised in sale or encumbered in any other manner; but that there is in existence executed with various individuals, an instrument dated December eighteen hundred and eighty four, executed in Chihuahua before the above mentioned Notary Public Jaurrieta, a colonization contract for a portion of the lands of San Antonio, which was entered into by the old owner of same, Licenciado Eligio Munoz, which contract the seller was obliged to respect when he bought it from said party; and that he makes this sale with the condition that such contract be respected by the said Davis. That furthermore, there is in existence another contract, dated the fifteenth day of February in the year Eighty six, entered into between said seller, Mr. Macmanus and Mr. Davis before the said No-

tary Public, Mr. Jaurrieta, with a lease in favor of the second for ninety nine years, on the lands of "San Antonio"; but that with respect to the contract, as the lessee is the buyer, he combines in his person the rights of both contracts, the first one being cancelled.

THE FIFTH CLAUSE says: that it not being possible to set out in detail in that instrument all the boundaries of the properties in question nor the geometric figures thereof, it was agreed; that in order that the inscription or record which may be made of that contract in the respective Public Registry, may contain all the legal requirements, the said Davis, before ratifying that instrument, shall present the testimonio thereof with a supplement which shall explain those requirements and further the corresponding maps. The said Davis and his legal attorney in fact, Mr. G. T. Newman, in compliance with the above clause, present only and as relating to the said land "La Santisima". which is the object of this record, which is made in this Town, by reason of being located in Bravos District, the "testimonio" by agreement in seven legal sheets with their corresponding stamps, which the Notary Public Licenciado Romulo Jaurrieta issued in Chihuahua on the first day of June eighteen hundred eighty six, of the proceedings had and the free distribution of water for irrigation which the State Government made in favor of Licenciado Leaureano Munoz on the twenty-third day of February, in eighteen hundred seventy two, for irrigation of the lands on the right bank of Bravo River from the Old Presidio(Presidio Viejo") to Pilares" including both places. In the remaining nine sheets, the said testimonio of the instrument of sale of the "La Santisima" lands executed in the City of Chihuahua by the heirs of the deceased Licenciado Laureano Munoz in favor of Ignacio MacManus before the Notary Public Licenciado Romulo Jaurrieta on the

first day of June of Eighty Six for the amount of ONE HUNDRED THOUSAND PESOS Mexican Eagle Silver and in the nature of a mortgage until its full payment by means of installments which at the periods stipulated in the second clause of said instruments (are payable); which testimonio by agreement, in its first clause only explains that the dimensions and boundaries of said La Santisima lands situated on the right bank of the Bravo River are on a belt of two leagues of latitude, from the Old Presidio as far as the ruins of "Pilares" commencing at the edge of the said river. Davis and Newman present a map on tracing cloth with the seal of the Department of Fomento and at the bottom a notation which reads as follows: "This is a copy of the map that is found in this Department. Mexico, November 22/86. M. Fernadez. Rubric. Of M." but on this map there is seen only, marked with red, a line on the *l*ank of the Bravo River, with an interval, without the red coloring almost to the center of its extent, and on one of the ends of that interval in white, there is seen the following inscription: "Presidio de Pilares." There is not seen, marked at the close of the red line what is the name of this place which appears to be all in Bravos District, no*t* is the latitude and longitude of the lands in question, determined, nor of others which reach to "Presa de Rueda", nevertheless from an official communication from the Department of Fomento which in one legal sheet is shown added to the testimonio, which by agreement is mentioned, under date of November tenth Eighty six addressed to Mr. Thomas MacManus, in which it is explained: That the rural property known as "La Santisima" situated in Bravos District in the State of Chihuahua by virtue of the documents in evidence which as it says were registered under the original titles of said Hacienda and in the other relative instruments, a study of which was made by

that Department, it was agreed and is declared without prejudice to the third part, that within the boundaries which were designated upon making adjudication of said property to Licenciado Laureano Munoz.

IN October of the year eighteen hundred fifty nine, there were no "baldios" (all public lands which have not been devoted to public uses by the proper legal authority) "demasias" (Lands held by *rpi*vate persons under original grants by in excess of the extension called for by the patents), not other class of lands that may be qualified as National: but that the total area of ONE HUNDRED FOUR THOUSAND *FQR* HUNDRED TWENTY FOUR HECTARES, FIFTY SEVEN ARES NINETY SIX CENTIARES? which the said property measoures according to the calculations of the Engineers William T. Gleen and Thomas T. Doyle who prepared the map of Bravos, is of exclusive private ownership, and the *the* documents which perfect it are legal, valid and perfect, etc. The SECOND clause of the testimonio by agreement with the instrument to which it refers, shows furthermore that the heirs of the deceased Licenciado Laureano Munoz received TWENTY FIVE THOUSAND PESOS from the hands of the purchaser, Mr. MacManus, in this proceeding; that TWENTY FIVE THOUSAND PESOS would be paid six months from that date, TWENTY THOUSAND PESOS in one year and THIRTY FIVE THOSAND PESOS in eighteen months, these three terms counted from the date of that instrument; and that accordingly making the above payments at the periods designated, there were executed the corresponding receipts before a Notary Public and there were made the notations in the mortgage department. The testimonio of that instrument was registered in the Property Book of that District as is shown under Number Eight from page thirty eight to forty two inclusive,

at eleven o'clock A. M. on the tenth day of June, eighteen hundred eighty six. In the Book of Mortgages it was recorded also on the same day and hour mentioned above, under Number Six, from page forty one to page forty four inclusive, which book is before him. In the same Book of Mortgages, under Number Nine, on pages forty eight to fifty there is evidenced the first installment of TWENTY THOUSAND PESOS which the said Ignacio MacManus paid in full to Licenciado Carlos Munoz for himself and his co-heirs under full power of attorney, by virtue of the Minute of delivery and receipt which before the said Notary Public, Mr. Jaurrieta were drawn up on the City of Chihuahua on the first day of December, of Eighty Six, which original proceeding in one legal sheet bears the corresponding stamps for account mentioned, the second sheet also containing, with its corresponding stamp, the respective annotation of having been cancelled in the Book of Mortgages, the amount mentioned as first installment.

THERE ALSO BEING CONTINUED in this Registry of Property, a statement as to the transferr of dominion of ownership of the rural property "La Santisima" which Ignacio MacManus has made favor Bennett H. Davis, as explaining from the beginning, it must be made and also is being made exactly in these same terms up to its conclusion in the Book of Mort*aggea* of the current year of Eighty Seven. In the proceeding, the said Davis in compliance with the obligation established to approve the contract of sale of the three connected properties, presents in two legal sheets with their corresponding stamps, "testimonio" number one hundred thirty six of the instrument executed by the said Mr. Davis in Chihuahua *beofre* the Notary Ignacio Flores on the twentieth day *fo* December, eighteen hundred eighty six, by which he accepts, approves and ratifies in the

same terms that it is conceived and for all its effects, the instrument of purchase which his private agent, Telesforo Garcia executed in his name which Ignacio MacManus through his judicial attorney in fact, Thomas of the same surname, of the Haciendas known as "Vado de Piedra", "San Antonio" and "La Santisima", located in the State, on the right bank of the Bravo River, on the sixth day of December, eighteen hundred eighty six in the City of Mexico before the Notary, Jose Maria Velazquez, to be further adjusted, according to the instructions which he gave him; which testimonio is legalized by the Notaries of the City of Chihuahua, Messrs. Antonio Sanchez Aldana, Luis G. Irigoyen and Manuel Vidal, the signature of these by the Governor of the State Felix Francisco Maceyra and his Secretary Manuel Gallegos, with the corresponding stamps attached. He presents also in one legal sheet an official communication addressed to the said Davis with the Seal of the Department of Fomento under Number 3,162 of the 1st Section of the Department of Public Lands, dated December nine, eighteen hundred eighty six, signed by the Chief Clerk of the said Department, by which the Secretary of Fomento, General Carlos Pacheco, concedes permission to him to acquire real properties on the border of the State of Chihuahua under legal obligations which the Nation has established and under the special obligations which the said Department of the Office of Fomento may designate to him; which concession or permit, and the ratification by public instrument which the said Davis made of the contract entered into by the said Garcia with the said MacManus, shows in the annotation which at the Bottom of the respective instrument is set out, same having been registered in the Books of Property and of Mortgages by reason of the mortgage which the property "La Santisima" carries; it being noted in both Books of the

last year of Eighty Six, in the margin of each register, under date of June tenth of the said year, that said property has passed into the lawful ownership and dominion of Mr. Davis with the mortgage obligation which has been verified. The said B. H. Davis and his judicial attorney in fact, Mr. G. T. Newman say: That for the purpose of verifying the records of the instruments and its correlative documents that they have presented with reference to "La Santisima" property, in order to cure or correct now and in this proceeding the debt of which mention is made at the beginning of this record, as to whether the State Treasury may collect a fee on said contract, if it were executed in the City of Mexico, they bind themselves in legal form and without further difficulty, to present to the undersigned Agent in Charge of this Registry Office, Licenciado Ignacio Ocadiz the resolution of the State Government of this month, as to whether or not that questionable payment accrues in this case, which the Treasury Law of the twenty-second of January of the current year, in its Article Sixth, Fraction Fourth and Fraction Third relative thereto, predetermines; or that in case by some previous law or it may be some decision of the said Government, such charges or taxes must be satisfied, in accordance with the Treasury Laws of the year "eighty six", Article Sixth, Fraction second, provided that in December of that year said contract of sale and purchase of the said La Santisima land was executed outside of the State, in the amount of ONE HUNDRED THOUSAND PESOS, which by its location is under the jurisdiction of Bravos District; it being understood furthermore, that for any of these *cases* for payment, if it be so decided by said Government, in order to guarantee the pecuniary responsibility, and whatever other might be contracted and devolve upon the said Agent of this Registry Office for failure in the matter

of this questionable payment, they execute: That renouncing their nationality and domicile, as they do so renounce, they bind themselves jointly and singly, personall*ty* and pecuriar*lilty* responsable for the results of such resolution, and they bind themselves with their holdings to satisfy the amount in money which said Government may determine, indemnifying the Agent of this Office for the damages and prejudices that may result to him in this matter, which payments they also bind themselves to make good in the proceeding which may be required by the legal representative of said Government or by the said Ocadiz as the one immediately responsible without the necessity of any judicial action other tha*m* for its execution, under the penalty of costs and expenses which may accrue in accordance with the Civil Code in this indemnity case, for the responsib*l*ility that may result, renouncing at the same time all the benefits which said Code grants to them. They add that whether or not they may be required to ma*d*e the said payment, they will set out the corresponding evidence in the margin of this record and in the margin of the mortgage. Thus they execute this record and as they explain, to save loss of time in their business, before the acting witnesses, who for due security and public certification in this unforeseen and exceptional case, are present; and stating that they are fully informed to their satisfaction *throught* the literal translation which in the English language is made for them by the interpreter, Mr. Manuel E. Flores. It is shown Messrs. Davis and Newman are going to execute, this matter is not carried out, it having been found desirable to suspend the proceeding until receiving the resolution of the State Government, which resolution, according as is seen by the official communication from the State Department, Section of the Treasury, Number 2,739, dated the twenty-third day of the current month

of May, addressed to the Agent of this office who subscribes, and from the telegram dated the twenty-seventh of said month of May, no fiscal dues are required for registration of the instrument in question, executed in the City of Mexico between Messrs. MacManus and Davis in the month of December of the year last past, "eighty-six." Consequently it being that all the said evidence of the testimonio of the instrument in question and other matters, excluding said bond, not carried out, in this record, have been and is subsisting and valid from the hour and date of its said presentation; which testimonio with its notation at the close, duly stamped, I return to the interested party, Mr. Davis, and to the attorney in fact, Mr. Newman, in seven legal sheets, including that added with the notation, as well as all other testimonios of instruments and official documents which have been referred to. In testimony of which and of its receipt, they sign with the subscribing Agent of this Office, this the twenty-eighth day of May eighteen hundred eighty-seven. Ig. C. Ocadiz. B. H. Davis. G. T. Newman. Rubrics. Crossed out. "of May." Not valid. Interlined. "Government of the". Valid. To which I certify. This instrument comprising five (5) legal sheets, duly compared corrected and with the lawful stamps, is issued at the request of Licenciado Juan N. Amador, for the uses which to his interest may accure, in Cuidad Juarez, on the twenty-seventh (27th) day of the Month of October, nineteen hundred ten 1910.

Signed M. HERRERA, (Rubric)
Agent of the Registry Office.

SEAL READING:

"COURT OF LETTERS
C. JUAREZ, BRAVOS
DISTRICT, CHIH."

National emblem in circle.

TRans.
JEMH.

ON REDIRECT EXAMINATION:

In my opinion this contract (referring to Exhibit "P-11") is absolutely in agreement with the general principle of law established in Mexico, in the Federal District and all States of Mexico regarding validity of contracts. I consider plaintiffs' exhibit No. 10 a valid muniment of title under the laws of Mexico, absolutely. Under the laws and customs in Mexico the description is sufficient.

Article 2730 of the Civil Code of Chihuahua reads: "If the sale of one or more real estate properties should be executed for a total price, without a special and partial estimate of the properties or of the measures, there will be no occasion for a rescission of the sale even in the case of the delivering of the property it will be in default or excess in the extension of the line."

Article 2731, makes reference when the lines are defined and not the extension. It says: "If, in the selling of real estate property, it will be expressed the lines or borders of the same, the seller shall be obliged to deliver the extent included in said line, even in the case it would exceed the extent stated in the contract."

These articles show it was not positively essential to define in detail the lines in the border of the land, and also it is not essential to fix the exact amount of the extension. I will also read the articles of the Civil Code of the Federal District, which correspond exactly to this. Article 2865, enacted March 31, 1884, of the Federal District. Article 2866, "If, in the selling of real estate, property, it should be decided the lines or borders, the seller

shall be obliged to deliver all the land within said borders, notwithstanding it will be excess in the extension expressed thereto." The same article, and the next one, corresponds with the next one of the Civil Code of Chihuahua. This shows the Civil Code of Chihuahua has been covered in full.

In my opinion Plaintiffs' exhibit No. 8 is absolutely valid under the laws of Mexico.

ON RECROSS EXAMINATION:

This contract was made in Mexico City, and the law, in regard to the external form of this contract, of the Federal District applies to this case. The Federal Code of the Federal District has been adopted essentially by all of the States.

Plaintiffs offered in evidence Exhibits 12 and 13, No. 12 being Spanish releases and acknowledgements of satisfaction of mortgage on La Santisima, and No. 13 being English translation of same.

COUNSEL FOR DEFENDANT: I desire to renew the objection, it is irrelevant and immaterial, and contains no description by which the property in this suit could be identified.

Plaintiffs' exhibit, marked "P-13", being in words and figures as follows:

P. 13

At the top, three documentary stamps cancelled by signature and rubric of Ignacio C. Ocadiz, Agent of the Registry Office.

Received of Messrs. Davis the amount of fifty-two pe-

sos cincuenta (fifty) centavos for the cancellation of seventy-five thousand pesos in settlement of the mortgage payment on "La Santisima" setting out the history of the origin of the mortgage of the three properties which have been sold, thus showing the record of each, with the minutes of the installments up to the last payment of one hundred thousand pesos, all by agreement of the insterested parties.

Paso del Norte, December three, 1887.

Signed IGO. C. OCADIZ (Rubric)

Seal or Stamp, reading:

" STATE OF CHIHUAHUA, BRAVOS DISTRICT.
REGISTRATION OFFICE OF
PROPERTY AND OF
MORTGAGES."

CANCELLATION of $35000.00 in full payment (of the amount) of the amount $75000.00, which was, together with the mortgage, held against the "LA SANTISIMA" land, situated in the Bravos District, State of Chihuahua, this 3rd day of December, 1887.

In the margin: Documentary stamps duly cancelled by seal of the Notary. In the center: IN THE CITY OF CHIHUAHUA, on the first of December, eighteen eighty seven, before the subscribing Notary Public and the witnesses who will hereinafter testify, appear Messrs. Ignacio MacManus and Licenciado Carlos Munoz, the latter for himself and as attorney in fact for his mother Ventura Revilla and his brothers and sisters, Luis, Raimundo, Trinidad, Jesus, Luz, Leonardo, Ana, Carmen and Maria, all Munoz y Revillas, as is verified by the testimonios (certified copies) of general powers of attorney, which I certify to have *beofre* me, the first exe-

cuted in his favor by the heirs of the deceased Licenciado Laureano Munoz, in this City on the twenty-fifth day of June eighteen hundred eighty four, before the Notary Public, Manuel C. Vidal and acknowledged by the said Licenciado Munoz, in the same, on the twenty-sixth day of the said month and year; and the second also conferred in his favor by his brother Raimundo in the City of Pachuca on the eleventh day of said month and year, before the Notary Public, Ricardo Perez Tagle, and acknowledged by the said Licenciado Munoz in this Capital City on the twenty-fifth of June of said year. I certify that said powers of attorney contain a clause, which literally reads as follows: In order that on whatever amounts, which belong to the makers hereof, be they ores, products, goods and effects, subject to the public debt, and other proceeds from any contracts which may be entered into with the Nation, States, Corporations and individuals, giving the corresponding receipts, letters of payment, or settlements, cancelling the mortgages or encumbrances to *wich* may be the subject the properties of their debtors or of the bondsmen of same."

In order that representing the person, rights and interests of the maker, he may receive, demand and collect the amounts of money, effects and other properties, which are owing to him and which he should receive, whatever may be the source of the indebtedness, and the person of the debtors, to whom he will give the receipts, settlements and other securities which are necessary and should be given in accordance with law. "The said MacManus said; That in conformity with the second clause of the contract of purchase of the lands known as "La Santisima" which he made from the heirs of the deceased Licenciado Laureano Munoz, and which the undersigned authorized, he must deliver as the balance of the price of said lands the amount of thirty-five thousand silver pe-

sos, eighteen months from the execution of the contract, which term expires on this day and in order to comply with that obligation, he delivers to Licenciado Carlos Munoz the said sum, which I certify to be correct, same having been done in my presence and in the presence of the witnesses, who are mentioned below, in seven sight drafts, for the amount of five thousand silver pesos each payable by the House of F. MacManus and Sons. The said Munoz said: That for himself and as lawful representative of his brothers and sisters and of his mother, he receives, which I certify to be correct, the thirty five thousand silver pesos, being the last installment which must be paid in eighteen months from the execution of the contract, as balance of the price of the "La Santisima" lands, and for which reason, for himself and as representative mentioned, he executes in favor of Ignacio MacManus, the most absolute receipt which may be lawfully required for said amount; and even though it may appear unnecessary to make renouncement of the action for money not delivered considering that the delivery has been verified in the presence of the Notary and witnesses, it is conformable to renounce that action and the term of two years for instituting it granted by Article one thousand two hundred two of the Civil Code, which term may have expired, and delivery to the said MacManus, to which I also certify, in ten legal sheets, of the original titles of the said lands, and consent that there be cancelled in the Proctocolo or Record Office the obligation to deliver the last installment in whatever balance remains of the price of the said lands, authorizing that the cancellation of the mortgage be made in the respective office. With which the present proceeding was closed, the parties signing same with the subscribing Notary Public and the witnesses. Yndalecio Cercero and

Pedro Lazo, on the proper stamped paper. To which I certify.

(Signed) IGN. MACMANUS (Rubric)
(Signed) CARLOS MUNZO (Rubric)
(Signed)
YNDALECIO CERCERO (Rubric)
(Signed) PEDRO LAZO (Rubric)
ROMULO JAURRIETA (Rubric)

A memorandum is taken of this proceeding in the Book of Mortgages of this the District of Bravos, under Number Seven, on pages from eighty one to eighty five, inclusive. Said Minute is inserted verbatim, and the previous cancellations examined which are found in the said book for the years to which they correspond, and it results: That the heirs of the deceased Licenciado Laurano Munoz having received the amount of twenty five thousand Pesos in the proceedings by them for the execution of the instrument of sale of the lands of "La Santisima", this property was mortgaged for the amount of Seventy-Five Thousand pesos, payable in three installments as stipulated in the second clause of that instrument, which payments have been made, according as is shown on pages forty-eight to fifty, inclusive; on pages sixty four to sixty six, inclusive of said book, in the year of Eighty seven, as explained in the last record of cancellation of this sum of THIRTY FIVE THOUSAND PESOS, in question in this proceeding; in testimony of all of which and at the request of the interested party Licenciado Bennett H. Davis, who has presented same —the balance of the price of ONE HUNDRED THOUSAND PESOS is liquidated, for which amount was sold by the said Messrs. Munoz, the "La Santisima" lands, and free from the mortgage of SEVENTY FIVE THOUSAND PESOS, to which it was subject, *whch* Minute

with this annotation at its close made on the same day of its registration, was returned to him on the two legal sheets which with another stamp of fifty centavos cancelled. And in proff of its delivery and receipt he signs this memorandun as he signed the record of cancellation mentioned, with the same interpreter, Mr. Jorge Sauer in his legal capacity, domiciled in a certain place of which I certify and with the agent in charge of this Registry in the District, Licenciado Ignacio C. Ocadiz, who authorizes same, with his seal, in Paso del Norte, on the third day of the Months of December, eighteen hundred eighty seven.

Signed CHAS. DAVIS.
Signed JORGE SAUER. Rubric.
Signed IGO. C. OCADIZ. Rubric.

Seal of the Registry of
Property and
Mortgages.

In the Margin: Documentary stamps duly cancelled by seal of the Notary. In the center: In the city of Chihuahua, on the first day of the month of June, eighteen hundred eighty-seven, appeared before the subscribing Notary, Messrs. Ignacio MacManus and Raymundo Munoz, and the former states: That in the contract of purchase which he made from the heirs of Licenciado Laurreano Munoz of the La Santisima lands, they agreed that the price of the same should be paid in the following manner: twenty-five thousand pesos in the proceeding at the time of signing the instrument, twenty thousand pesos in six months, twenty thousand pesos in one year and thirty-five thousand in eighteen months from that date, and a year from the time of executing said instrument expiring today in order to comply with the obliga-

tion that he must make the third payment "exhibition", he delivers to Raymundo Munoz, twenty thousand pesos, which the subscribing Notary certifies to have been done in his presence and in the presence of the witnesses, who at the close will testify. Thereupon the said Munoz stated: that he receives the twenty thousand pesos for himself and in the name of his Mama and brothers and sisters, which in this proceeding the said MacManus delivers to him, executing for that amount the most absolute receipt which may be necessary in law; and having complied on the part of the said MacManus with his obligation to deliver twenty thousand pesos as part of the price of la "Santisima" lands at the time of the execution of the instrument. With which this proceeding was closed, which the subscribing (Notary) signs with the parties appearing herein and the witnesses, Messrs. Ricardo Ramos and Gaspar Najera, of adult age and residents. To which I certify.

Signed RAIMUNDO MUNOZ (Rubric)
Signed IGN. MACMANUS (Rubric)
Signed GASPAR NAJERA (Rubric)
Signed RONULO JAURRIETA (Rubric)

Signed RICARDO RAMOS.

(Notarial Seal of
subscribing Notary)

June 4, 1887.

Stamp of one peso
duly cancelled.

Seal reading:
"ESTADE DE CHIHUAHUA.
"Bravos District
"REGISTRY OF PROPERTY
and of

MORTGAGES, ETC."

This Minute or proceeding having been presented by G. T. Newman in order that there might be cancelled the amount set out therein; in the respective place of the book of mortgages; also there is evidenced on pages sixty-four, sixty-five and sixty-six of the said book which sets out this annotation as well, in evidence of which I received this minute, which is returned to him on the same day of its presentation, and he signs with the undersigned agent of this Office, who signs and seals same with a stamp of one peso cancelled. . . Paso del Norte . ., June four, eighteen hundred eighty-seven.

Signed YG. C. OCADIZ (Rubric)
Signed G. T. NEWMAN."

Same seal as set out at the
beginning hereof.

Plaintiffs' Exhibit No. 12, being Spanish copy of the English translation, is a public instrument that may be provided in any court in Mexico, and consequently in any court in the United States, duly verified.

Plaintiffs offered in evidence their Exhibits 14 and 15, No. 14 being Spanish instrument of sale, dated December 6, 1886, conveying La Santisima from Ignacio Macmanus to Bennett H. Davis, and No. 15 being English translation thereof.

COUNSEL FOR DEFENDANT: In addition to the objections heretofore stated, and which, if not required, I will not repeat at this time, we have the further additional objection it affirmatively appears from the instrument itself, and from the official endorsement made on it, that it must be accompanied by a particular description of the land and map show-

ing the land sought to be claimed or held under the instrument, and the instrument shows for itself that no such description was embodied in it, or attached to it or accompanies it, and no such map accompanies it, and no map appears in the recordation which has been introduced. In addition to that, it is objected to on the ground, if the Court please, that this instrument was first tendered for record in 1924; that was after the adoption of the Constitution of 1917, and after the promulgation of the organic law putting Article 27 of the general Constitution into effect, and after the adoption of the Agraian Law by the State of Chihuahua, and in that it is specifically required before any alien may acquire a title within the prohibited zone, or before he may execute any transfer or cause the same to be recorded, or before any notary public may transcribe or record such a transfer, or any public official may do any act or thing recognizing such transfer, or purporting to give any validity to it or record to it, that this can only be done after permission has been granted by the Federal authority in the City of Mexico to authorize the execution and recording of such an instrument, and the transfer or acquisition of any right thereunder. All of which appear affirmatively from the instrument itself to be lacking, and the organic law providing that any registration or any act done contrary to the prohibitive provisions above set out shall be null and wholly without effect, and that failure to comply with the articles shall give to the public authorization or recordation of the instrument no vailidity or effect. I think in addition to the objections stated, or rather in correction of the objections stated, that I am not sure that I made the objection correctly, and that is that these requirements

in regard to the registration are required by the Agrarian Law itself and not by the Constitution, but the objections are those already stated, but based upon the Agrarian Law of the State of Chihuahua.

COUNSEL FOR PLAINTIFFS: What is the date of the enactment of the Agrarian Law, when it became effective?

COUNSEL FOR DEFENDANT: The 25th of May, 1932. I think I already made the objection, but out of abundance of caution, that instrument expressly provides it shall not be effective until Bennett H. Davis shall accompany it with a particular description of the land sought to be attained, and a map accompanying the same.

The exhibit marked "P-15" is in words and figures as follows:

P. 15

ORDER NUMBER 6347

(LARGE CUT OF NATIONAL EMBLEM)

GENERAL NOTARIAL FILE
OF THE
FEDERAL DISTRICT

"TESTIMONIO" (CERTIFIED COPY) OF INSTRUMENT NUMBER 133
SALE IGNACIO MACMANUS TO BENNETT H. DAVIS.

MEXICO, JUNE 1923.

In the margin: Seal reading "GENERAL NOTARIAL FILE OF THE FEDERAL DISTRICT. United Mexican States," also the word "Compared" with rubric of

the Notary . . . . also documentary stamp duly concelled . . . . In the center: . . . .

..... 1 ..... S. 1886

..... 133 ..... fs. 325

c. r.

NUMBER ONE HUNDRED THIRTY THREE

IN THE CITY OF MEXICO, on the sixth of December, eighteen eighty six before me, Jose M. Velazquez, Notary Public in this Capital City, accompanied by the witnesses who will sign, have appeared Messr. THOMAS MACMANUS, thirty years of age, married, freeholder, resident of the City of Chihuahua and transiently in this Capital with lodging in the Hotel del Jardin, as one party, and as the other, TELESFORO GARCIA, an adult forty years of age, married, also a freeholder, and of this domicile, with dwelling at house Number two, Cordobanes Street; the first representing his brother, IGNACIO MACMANUS, as he proves by power of attorney which he exhibits and from which a memorandum will be taken at the close of this instrument; and the second, by BENNETT H. DAVIS, citizen of North America, resident of the City of "El Paso", Texas, in the United States of America, from whom he received a confidential commission to execute for him this contract, under the condition that, for its validity and efficacy, he will ratify it in due form, since if Mr. Davis did not personally do so, it was because he was forcibly absent from this capital, but he was the one who agreed with Mr. MacManus as to the Minute, which is this day drawn up. The undersigned Notary certifies as to the truth of the above assertion, and they said: That Mr. Ignacio Macmanus is in full possession and full dominion or ownership of the farming property or Hacienda known as "Vado de Piedra", located on the right bank of the

Bravos River in the District of Ojinaga, of Chihuahua, with an area of ten sitios de "ganado mayor" (and old land measure) and with the following general boundaries: On the East by the Bravo River: On the North, the private lands of the seller; on the West, the public lands (Baldios) which were measured and surveyed by the Compania Deslindadora (Surveying Company) represented by Jose Valenzuela, and on the South, those which terminate in the ruins of "Presa de Ruedas": which property held by purchase made thereof from Jose Solis, by virtue of an instrument dated the twenty-eighty of June of the present year, executed in Chihuahua before the Notary Ignacio Flores; Colis purchased it from G. Galvan, which is proven by the fact that the Judge of the First Instance of Rosales District of that State authorized it, on the ninth day of September, eighteen hundred eighty-one; Galvan acquired from Jose Merino, in conformity with proceeding on the first of October, eighteen hundred sixty-nine which was conducted before the Notary, Jose Maria Porras in Chihuahua; and Merino held it by virtue of adjudication made in his favor by the President of the Republic. Ignacio Comonfort. On the twenty-ninth of November, eighteen hundred fifty-six, according to the original title. That also the said Ignacio MacManus hold in ownership and full dominion, eight sitios de ganado mayor, located on the right bank of the Bravos River and contiguous to the above ten of the "Vade de Piedra" Haxienda, with those which adjoin on the north side of the lands known as "San Antonio", forming a belt with an area of one league of latitude on the ruins of the old "Presidio de Pilares"; which land the seller purchased from Lic. Eligio Munoz by instrument of the fifteenth of February of the present year, executed in Chihuahua before the Notary, Romulo Jaurrieta; and Munoz had same by adjudication made in his

favor by the President of the Republic, Benito Juaez under date of the fourteenth of December, eighteen hundred sixty four, which title was conformed by one issued by Porfirio Diaz on the fourteenth of February, eighteen hundred seventy eight. That likewise and the said Ignacio Macmanus is the owner of other lands of two leagues of latitude, with an area of one hundred four thousand four hundred twenty-four hectares, fifty seven ares, ninety-six centarea, on the right bank of said Bravo River, which belt of land has at one extremity what is known as "Presidio Viejo" and at the other end the ruines of "Presidio de Pilares", which serves as a boundary for the land previously described and to which it joins, which is shown as "La Santisima". That although by some general law, foreigners will be prohibited from acquiring rural properties on the frontier, within a zone of twenty leagues from the boundary line with the neighboring Republic towards the interior of Mexico, proper steps have already been taken for removing that difficulty, and with the understanding that it may be accomplished, adding same to the testimonio of this instrument, the official evidence which may so justify it, they draw up the contract agreed to be the said Davis in the terms which are set out in the following clauses:

1st. FIRST.

Mr. Thomas Macmanus for his brother Ignacio of the same surname, in exercise of the power of attorney that he holds from the latter, sells forever, in a complete and irrevocable manner to Mr. Bennett H. Davis, the three properties in question, known as "Vado de Piedra", "San Antonio" and "La Santisima", with their corresponding areas and whatever is contained thereon, as farm lands, pastures lands, woodlands, waters, quarries, buildings, and furthermore its dominant and serving

rights of way, uses, customs, and whatsoever belongs to them in fact and in law.

2nd. SECOND.

The price of said properties is the amount of one hundred twenty one thousand pesos—$121,000.—of which seventy-five thousand pesos will be acknowledged as accruing from the "La Santisima" in favor of the heirs of Lic. Laureano Munoz, residents of the City of Chihuahua, to whom the property is acknowledged as belonging for six, twelve and *w*ighteen months, in conformity with instrument dated the first of June of this year, executed in said City of Chihuahua before the Notary Romulo Jaurrieta; and the balance of the price which is forty-six thousand pesos, the said Macmanus confesses and declares, he has already received from the said Davis, counted and *adited* to his satisfaction, and by virtue thereof he draws up the receipt, as given in this instrument, which will not be subject to later exceptions.

3rd. THIRD.

The parties declare, that the one hundred twenty one thousand pesos of the price agreed to, is the just and true value of the properties, and they incur no damage or lesion by virtue thereof; they bind themselves not to ask for rescission of this contract even in the case which, in accordance with Article 2890 of the Civil Code, by later report of experts, it may result that some one suffered same, to which end they renounce the 1660 (Art.) of said ordinance, which designates the term within which the relative action may be brought, considering sames as being of no further effect.

4th. FOURTH.

The said Macmanus asserts that his principal has not

sold, promised in sale, nor in any other alienated the properties in question; but that there does exist entered into with various individuals, in the instrument of the twenty ninth of December, eighteen hundred eighty four, executed in Chihuahua before the aforesaid Notary, Mr. Jaurrieta, a colonization contract for a part of the lands of San Antonio, which the old or early owner Lic. Eligio Munoz agreed to (entered into with them), which contract the seller is bound to respect, thus binding himself when he bought from said party; and this sale is made today with the condition that said contract be respected: Further there exists another, dated the fifteenth day of February of the present year, entered into between said seller, and one Davis before the Notary Jaurrieta, for a lease in favor of the second party for ninety-nine years for the lands of San Antonio; but with respect to this contract, as the lessee is the said purchaser, he unites in his person the rights and interests of both contracts, the former being annulled. With respect to encumbrances, the said Macmanus asserts that the properties "Vado de Piedras" and "San Antonio", are entirely free from all encumbrances real and by mortgage, and "La Santisima" alone is subject to the one which has already been specified. The said grantor forever relinquishes, acting for his principal, whatever rights and interests may have accrued to him as the owner and possessor of the properties which he is selling, and cedes and transfers them to the said Davis, that he may dispose of them as a thing of his own, acquired under just title, as will also be the testimonio which is supplied him, that by virtue of same and of the other titles which have been delivered to him, he may take the possession which belongs to him and which will be tendered him in this proceeding at the time of signing these presents. And with respect to eviction and indemnity

of this contract, that is a condition arranged with the said Davis, that the seller, Ignacio Macmanus is expressly released from presenting it and from all relative obligation.

5th. FIFTH.

It not being possible in this instrment to itemize all the boundaries of the properties in question nor the geometric figuers of the same it is agreed: That in order that the inscription, which is made of this contract in the respective Public Register, may contain all the legal requirements, the said Davis, before making ratification of this instrument, will present the testimonio thereof with a supplement which explains those requirements and even the corresponding maps.

6th. SIXTH.

Mr. Garcia, in the name of the said Davis, accepts this instrument for him and the sale made therein, binding himself that he will ratify this by means of another in legal form; but first offering the explanation that this contract will not prejudice the nationality of the Said Davis as the latter wishes to preserve it, and so he sets out with reference to the provision in Frac. X. of Article First of the Law of May 28 of the present year, on alienship and naturalization. The power of attorney which the said MacManus is using, was conferred upon him directly by his brother Ignacio, in Chihuahua, on the twenty-sixth day of last October before the Notary, Ignacio Flores, which was duly approved, and contains among other things in its clauses the following: Eighth. He may lease, many encumber, may mortgage, may sell, may permite and alienate in any other manner the holdings, furnishings and real estate and the shares of stock and equiteies of the maker of the power, executing in public

documents with the requisite formalities, requirements and conditions which under the law requires, or which he may deem proper, all the proceedings, agreements, transactions and contracts that he may enter into by virtue of the said power of attorney.

The makers hereof having read that which is set out herein, they ratified same and they signed, stating that they know its full force and effect. The witnesses are Augustin Montes de Oca and Miguel Gonzales Guerrero, single, private employes, of adult age and of this domicile. They added, at the time of signing: That in this contract of sale there is comprised a sale of one thousand three hundred ten hectares of "demasias lands (Lands lying between two claims, etc.) which for a superficial area in the lands of the Hacienda "Vado de Piedra", and of which the title thereto, issued by the General Government, was delivered to the representative of Mr. Davis. Tomas Macmanus. Rubric. Telesforo Garcia. Rubric. Augstin Montes de Oca. Rubric. M. Gonzales Guerrero. Rubric. Jose M. Velazquez, Notary Public. Rubric.

MARGINAL NOTES.

In five f- with stamps for $247 gave copy on the seventh day for Mr. Davis and I added $605 for the State Tax. Rubric.

ANNOTATION. In instrument executed in the city of Chihuahua on the twentieth of December, before the Notary Igno. Flores it is recorded, that Mr. Bennett Davis accepted and ratified the contract to which this instrument refers, in the same terms as the one to which the said Telesforo Garcia agreed in his name; and I add a certified copy to the communication by which the President of the Republic allowed Mr. Davis to acquire lands

on the border. Let it be recorded. January 4, 1897. Rubric.

ANNEXED.

The Notary who subscribed hereto CERTIFIES: That Thomas Macmanus, in the name of the said Davis, has presented me with the document, which *i* copy: "Department of Fomento, Colonization, Industry and Commerce, Mexico, Section 1st. Department of "Baldios or Public Lands. No. 3162. The President of the Republic, in view of the good reports that he has received *bout* you, has deemed proper to grant you permission to acquire real properties on the border on the Chihuahua side, with the understanding that you must advise this Department the exact location of the acquisitions that he may make, and with the understanding that he must be fully informed of the obligations that he contracts and which are found set out in the laws of the Republic. I communicate this to you for your information and as a result of your petition relative thereto, dated November second last. Liberty and Constitution. Mexico, December nine, eighteen hundred eighty six. P. O. D. S. Manuel Fernandez O. M.—to Mr. Bennett H. Davis. Present. This agrees with its original to which I re*d*er: at request of Mr. Macmanus in order to add it to the instrument of sale of lands which he made to Mr. Davis, I deposit these presents in Mexico, on the ninth of December, eighteen hundred eighty six. Jose M. Valazquez. Notary Public. Rubric. A seal reading: JOSE M. VELAZQUEZ. NOTARY PUBLIC, MEXICAN REPUBLIC.

THIS IS THE THIRD TESTIMONIO taken from its original, which is authorized by the Notary Jose Maria Velazquez in the respective proctocolo or *P*ecord Office which is found in this File under my charge; and in ex-

ercise of the power conferred upon me by the Notarial law in force, in its Article ninety-six, fraction fourteen. I issue these presents as Director of said Office for Mr. L. SHAPLEIGH, joint owner of the rural property known as "La Santisima", according as is shown by instrument dated February thirteenth, eighteen hundred ninety seven, executed before the Notary, H. R. Wood, of El Paso, Texas, protocolized or recorded on the second day of December, eighteen hundred and ninety seven, under Number thirty-two, before the Notary of Bravos District, Chihuahua, Mr. Sostenes Rodriquez. This is compared, a press copy taken and is issued in five sheets with the lawful stamps, cancelled, which on three of the margins of the original there are stamps affixed to the value six hundred and five pesos. Mexico, June fourteen, nineteen hundred twenty-three.

(Signed CLICENO DIAZ (Rubric)

FEES EARNED:
Seventeen Pesos fifty
centavos.

(STAMPS)

Seal reading:

"GENERAL NOTARIAL FILE OF THE FEDERAL DISTRICT. UNITED MEXICAN STATES." MEXICO."

LEGALIZATION NO. 2343

SECTION OF JUSTICE
Warrant No. 2183
Fees $5.00

Celistino Garza, Governor of the P. T., D. F. legalizes the seal of the General Notarial File of this Capital and the signature of Cliceno Diaz, Director of said Office, the

said seal and signature as being authentic.
Mexico June 18, 1923.

Signed C. GARZA (Rubric)

The General Secretary
Signed O. MEDILLIN OSTO.

Presented for its inscription this day at 11 o'clock
Chihuahua, April 12, 1924

The Registrar
(Signed) RAFAEL SETIEN SIERRA (Rubric)

(Seal) Central Office of the
Public Registry etc.

REGISTERED to-gether with the document of ratification under Number One hundred, at folios two hundred seventeen and following of book Ninety Eight of the First Section; the property being numbered six thousand four thir*yt* four, corresponding to Vado de Piedra and demasias (Excess Lands) Chihuahua April fourteen, nineteen hundred twenty-four, To which I certify.

Between lines "and Demasias" Valid. To which I certify.

The Registra*t*
(Signed) LIC. RAFAEL SETIEN SIERRA
(Rubric)

Same seal as above.

REGISTERED with the testimonio of ratification and for whatever may relate to the San Antonio property, under number fifteen, at folios thirty one and following, in book number ninety nine of the First Section, numbering the property under number six thousand eight hundred eight. Chihuahua, May seventeetnh, nineteen hundred twenty four. To which I certify.

The Registrar,
(Signed) RAFAEL SETIEN SIERRA (Rubric)

Same Seal.

ON REDIRECT EXAMINATION:

According to the text of clause fifth of this instrument marked "P-14", it appears that it was the agreement of the parties that Mr. Davis should make ratification of this instrument, and to present with the testimony of the ratification the plans of the land, and I find that the ratification has been made and the plan is attached with the ratification.

I mean map, which is a translation of plans.

In my opinion once the ratification has been made and the map attached hereto, that made this title a good title; and the objections that have been made that the ratification has *has* been made in 1924 is not comprised in it, because it is not the same ratification that selling, in executing a deed, the acts have already been executed and the ratification is just a form, solemnity, that is retroactive, that comes before, to the date when the acts are executed, in this the act comes to the act already executed. The sale was made in 1886, and I consider this title is a good title.

In my opinion the Agrarian Law of the State of Chihuahua has been enacted in the State without jurisdiction of the State, a flagrant violation of Article 27 of the Constitution of Mexico. Furthermore, in my opinion, said law is contrary to the text of the official Code of the State of Chihuahua that forbids the possession of any land, and being prohibitive text according to Article 5 of said article, the execution of said land as a void act. My opinion is this instrument about which we are talk-

ing is not in violation of the Agrarian Law for the reason that the Agrarian Law is unconstitutional.

I mean this title is not void because it could be constitutional against this act, because the Agrarian law itself is invalid, has been enacted in the State of Chihuahua without the jurisdiction to do so, and is illegal and void.

The terms of the clause establishes that the testimony will be presented with the map, but this does not affect in any way the validity of the contract. The law don't say if no map is attached thereto the contract will be invalid or void. This does not affect in any way the validity of the title, because the validity of any contract or any instrument is ruled by the law, with all essential elements of its validity. The essentials are, first, the legal capacity of the contracting parties. Here we have the legal capacity of the contracting parties. Second, mutual consent of the parties; third, that the object of the contract will be legal; and, fourth, that the contract shall be executed with the external formalities of the extent of the law. This contract covers all essential elements prescribed by the law; consequently the objection made does not affect in any way the validity of the contract.

I have here the organic law of Article 27, fraction first, of the Federal Constitution of Mexico. The organic was 1924, promulgated the 31st day of December, 1925, by General Calles, and it is essential, the prohibition of all organic law, in order to apply the Federal Constitution to a complete case. Until that organic law took effect you applied general application, execution to a concrete case. Before the organic law the provisions of that law could not apply to transactions before that.

COUNSEL FOR DEFENDANT: That was the

purpose of my correction, when my objection should have been predicated upon the Agrarian Law.

In my opinion neither the Constitution nor the Agrarain Law of the State affect in any way the legal validity of this title, because the Federal Constitution in the part relating to this point cannot be applied to the case before the organic law of the same has been established by the Mexican Government, and the Supreme Court of Mexico has decided in many decisions already that general provisions of the Constitution cannot be applied to any case retriactive. And the Agrarian Law of the State does not affect in any way the validity of this title because the Agrarian Law of the State of Chihuahua is absolutely void from a constitutional point of view.

The Agrarian Law of the State of Chihuahua has been promulgated the 25th day of May, 1922. Said law established just three prescriptions that the maximum extension of land that could be owned in the State by any person, or corporation legally constituted, is 40,000 hectares. Article first of the law. And B, the owners of land in an extension of land exceeding the amount above cited will be obliged to execute the division of said land. To that purpose they shall present to the Governor of the State, within a period of six months, a project for the division of the land, together with maps and titles of said land. C. The fact that the owner should not present the project for the division of the land and the maps referred to in Article 3 shall be understood in the sense that they refused to execute said division, and the Governor of the State shall expropriate the land under the terms of Article 27, Fraction VII, Letter C of the Federal Constitution. The relative part of Article 27 of the Federal Constitution of Mexico reads as follows: "During the next constitutional term, the Congress and

the State Legislatures shall enact laws, within their respective jurisdictions, for the purpose of carrying out the division of large landed estates, subject to the following conditions: A. In each State and Territory there shall be fixed the maximum area of land which any one individual or legally organized corporation may own. B. The excess of the area thus fixed shall be subdivided by the owner within the period set by the laws of the respective locality; and these subdivisions shall be offered for sale on such conditions as the respective governments shall approve, in accordance with the said laws. C. If the owner shall refuse to make the subdivision, this shall be carried out by the local government, by means of expropriation proceedings. D. The value of the subdivisions shall be paid in annual amounts sufficient to amortize the principal and interest within a period of not less than twenty years, during which the person acquiring the land may not alienate the same. The rate of interest shall not exceed five per cent per annum. And this is letter E, on which the Governor of Chihuahua based the Agrarian Law, "The owner shall be bound to receive bonds of a special issue to guarantee the payment of the property expropriated. With this end in view, the Congress shall issue a law authorizing the States to issue bonds to meet their agrarian obligations. This is stated in the Federal Constitution of Mexico, in the same letter, on which the Governor of Chihuahua based the Agrarian Law.

The Agrarian Law of Chihuahua exacted without jurisdiction. A. By the letter and spirit of the constitutional prescription above cited and taking into consideration, especially, the text of paragraph E of said statute, it appears, clearly and conclusively, that to sanction and promulgate laws by the States in order to expropriate and divide real estate properties, to the effect and pur-

pose of said prescription, it is essential and basic the previous enacting of a Federal law, organic of said statute, that should grant to the States the necessary authorization to create his agrarian debt, establishing, at the same time, the nature, character, condition and circumstances of said debt. B. The essential and primordial existence of this Federal law is substantiated by the consideration that according to the second paragraph of Article 27 of the Federal Constitution of Mexico "expropriations shall be executed only by public interest and by means of compensation", and, on the terms of Article 117, Fraction VIII, of the Federal Constitution, the States are forbidden to contract or incur in any obligation in regard to a foreign person or a foreign corporation when it will be necessary to issue titles or bonus to the bearer or his assignee.

'C. The previous enactment of this Federal law as an essential condition to the promulgation of a State law for the expropriation and divison of big real estate properties was expressly recognized in an official statement of the Mexican commission attached to the General Claim Convention of September 8, 1923, between Mexico and the United States. Said statement reads as follows: "The Mexican commissioners added that the question of the division of lands has been the subject of an exchange of views between the Commissioners, but in view of the fact that Congress has not issued any law authorizing the various States of the Republic to create agrarian debts or to issue bonds for this purpose and in view of the fact that the American Commissioners, in behalf of their Government, have stated that all the rights of the citizens of the United States regarding such division and the expropriation of sale of lands for bonds or for any consideration other than in cash are reserved, and that

the Mexican Commissioners, on behalf of the Mexican Government, take knowledge that the American Government has reserved the rights of its citizens in this and in other respects, this question is not made the subject of a particular statement."

D. In view of the legal prescription and considerations above stated and in view of the facts that in the case the Government of the State of Chuhuahua promulgated the agrarian law of the State, which principal aim is to execute the division of big real estate properties, if advisable, by expropriation, without the promulgation of the Federal Law that should authorize the State of Chihuahua to create his agrarian debt, as it appears clearly and expressly in the very same decree of expropriation, it is perfectly right and sound to state that the referred agrarian law enacted in the State of Chihuahua the 25th day of May, 1922, was promulgated without jurisdiction and in flagrant violation of Article 27, Fraction VII, Letter E of the Federal Constitution of Mexico.

Another point regarding violation of Articles 14 and 16 of the Federal Constitution. It is already established, clearly and soundly, that the agrarian law of Chihuahua has been promulgated without jurisdiction and in flagrant violation of Article 27, Fraction VII of the Federal Constitution of Mexico. On the other hand, the letter of said law shows, eloquently that in order to issue a decree of expropriation, of a big real estate property, it is not necessary, in any way, to follow, previously, a legal suit, against the owner of the land, before the court duly established in the State and fulfilling, carefully and legally, in said suit all the essential formalities of the proceeding. And, as in the case in question, the decree of expropriation issued by the Governor of Chihuahua against the owners of La Santisima, San Antonio, El

Comedor, etc., was based, precisely and essentially on the Agrarian Law already cited, it is clearly and unquestionably the violation of the constitutional rights or guarantees sanctioned by Articles 14 and 16 of the Federal Constitution of Mexico against the owners of the land, Messrs. Thomas Ranken, Jr., Charles H. Peck, Alfred L. Shapleigh, Charles Davis and John J. O'Fallon; and consequently, for the reason and grounds above stated, the Amparo and protection of the Federal justice should be granted to said persons in order to restore them the full exercise of such rights. The Agrarian Law of Chihuahua was not applicable to the case. Supposing, without admitting, that the Agrarian Law of Chihuahua should have been promulgated within the constitutional power of the Government of the State, and that the applying of said law at a given case should not imply the violation of the personal guarantees sanctioned by Article 14 of the Federal Constitution; and even in this supposition, we will find, in reading carefully said law and the official letter of the Governor to the State Congress presenting the project of the same, that according to its letter and spirit, each person shall have the right to own and possess in the State 40,000 hectares of grazing land. (Articles 1, 2, 3, 4, 5 and 12 of the Law and the corresponding explanation and interpretation in the official letter of the Governor already cited).

The decree of expropriation shows that the owners of the land expropriated are Messrs. Thomas Ranken, Jr., Charles H. Peck, Alfred L. Shapleigh, Charles Davis and John J. O'Fallon, all of them possessing said land personally and as co-owners of the same. In fact, as several of said persons have died before the issue of the decree of expropriation, each of them leaving several heirs, the real owners of the land at said time were more

than twenty persons. But considering only the five original owners it should be said that according to the letter and spirit of the Agrarian Law each one of said persons has had the right to own in the State 40,000 hectares of grazing land, as it is almost all the land expropriated; and consequently, that the five co-owners above cited should have the right to have and possess a total extension of 200,000 hectares of said land. And, as the extension of land expropriated amounts to 89,704 hectares 55 acres and 80 cientiaras (resolution No. 1 of the decree), it is perfectly right and safe to state that the Agrarian Law of Chihuahua was not applicable to the case.

In the decree of expropriation the Governor of Chihuahua expressly decided that the owner of the land shall be compensated on the terms of Article 27, Fraction VII, Letter D of the Federal Constitution of Mexico "when the Agrarian debt of the State would be created according to the prescription of Letter E of the same constitutional statute." On the other hand, Article 736 of the Civil Code of the State of Chihuahua reads as follows: "The property of any person cannot be occupied without the consent of the owner unless by cause of public uitility and previous indemnification." This prescription of the Civil Code of Chihuahua has been sanctioned as an individual guarantee of Article 27, second paragraph, of the Federal Constitution of Mexico, establishing: "Private property shall not be expropriated except for reasons of public utility and by means of indemnification." Confronting the decision above inserted, of the Governor of the State with the legal and constitutional prohibition to execute any expropriation without the previous indemnification, we arrive, necessarily, to the conclusion that the decree of expropriation issued in the case by the Governor of Chihuahua has had no legal effect at

any time or that the execution of said decree has been realized with absolute violation of the individual guarantee established by Article 27 above cited of the Federal Constitution. And the same facts and considerations stated in this point could base and justify the Amparo and protection of the Federal justice to the owner of the land.

The last point, it says, the decree of expropriation legally and absolutely void. Article 736 of the Civil Code of Chihuahua prescribes: "The property of any person cannot be occupied without the consent of the owner *less* by cause of public utility and previous indemnification." The text of this legal statute is absolutely prohibitive, forbidding unconditionally any kind of expropriation without the previous indemnification. The sanctioning of this very same principle by the Constitution of the State and by the Federal Constitution of Mexico reveals and establishes that the nature and cause of this prohibition is the public and social interest on the matter. On the other hand, the Civil Code of Chihuahua, as the Civil Code of the Federal District and of all and every one of the States in Mexico has a Preliminary Title with general prescriptions regarding all kinds of laws and to all regulations, decrees and decisions of the Government on public matters. In Mexico it is a well settled principle of doctrine and jurisprudence that the prescriptions of this Preliminary Title of the Civil Code are applicable not only to the civil social relations, but also to all kinds of *juridical* acts, including the public administration. Article .5 of this Preliminary Title of the Civil Code of Chihuahua reads as follows: "Any act executed against the text or tenor of a prohibitive law shall be void, unless the same law establishes something contrary." In the case in question the Government of Chihuahua decreed

the expropriation of La Santisima, San Antonio, Vado de Piedra, etc., stating that the "owner of the land shall be compensated when the agrarian debt of the State would be created." This resolution of the Governor of Chihuahua is in flagrant violation of Article 736 of the Civil Code of the State, that forbids, without reserve, to execute an expropriation in another way than through previous indemnification; and, as this legal prescription is essentially prohibitive, both in its spirit and in its letter, according to the text of Article 5 of the Preliminary Title of the Civil Code, already cited, we shall state, in conclusion, that the decree of expropriation issued in the case by the Governor of Chihuahua is and has been absolutely void, not having produced any legal effect whatsoever.

These are the grounds by which I consider the enactment of the Agrarian Law of Chihuahua does not affect in any way the validity of this title.

COUNSEL FOR DEFENDANT: I would like to add, irrespective of the question whether this land is within or without the prohibited zone, the Agrarian Law provides no registration of transfers shall be made unless notice is given to the State Government, and an answer received, which answer means the permit or approval of the transfer. Clause No. 5 of the deed from Macmanus to Bennett Davis violates the requisite; until the full description of the property could be given and the map attached to the deed; the registration was not made and the deed was not ratified until 1924, which was two years after the Agrarian Law had gone into force and effect, and therefore that registration of it is improper and invalid.

THE COURT: Add that as additional ground of objection.

A recess was taken at 5:00 o'clock P. M. and upon reconvening at 9:30 o'clock A. M., October 26, 1934, proceedings were resumed as follows:

Plaintiffs offered in evidence their exhibits 16 and 17, No. 16 being Spanish document, deed, dated January 2, 1924, confirming sale by Ignacio Macmanus to Bennett H. Davis, and No. 17 being English translation of same.

COUNSEL FOR DEFENDANT: The objections to these instruments, in addition to those which we have heretofore stated—I won't repeat those.

THE COURT: Very well, it will be considered that the objections already urged to the other documents apply to this, and with additional objections.

COUNSEL FOR DEFENDANT: In addition we wish to offer the objection that under the Agrarian Law of the State of Chihuahua that no registration of a transfer was lawful unless notice was given to the State Government and answer received—permission received would be the effect of it—for the record of such a transfer, and that any transfer in the absence of that would be illegal, and the instrument without legal effect or validity, and it appears from the fifth clause of the exhibits 14 and 5 that registration was prohibited.

COUNSEL FOR PLAINTIFFS: Pardon me, Major. What you said just now applied to 16 and 17, and now you are going back to 14 and 15.

COUNSEL FOR DEFENDANT: I am connecting it with that to show the unlawfulness of the trans-

fer, that under the fifth clause of exhibits 14 and 15 registration of the instruments was prohibited, and its effectiveness inhibited until Mr. Bennett Davis had filed a full description and map. The exhibit which was read does not appear on its face to have been made until 1924, when it was not made by Mr. Bennett Davis, who had died, as we will show to the Court, had died many, many years before, but was made ex parte, and the other deed, when tendered for registration in 1924, came under the provisions of the Agrarian Law adopted in 1924, which forbade its registration and declared it to be without effect until application had been made to the State Government for a permit, and permit had been granted. And this objection in regard to the registration we now want to note is offered as to all four of the exhibits, that is 14, 15, 16 and 17.

THE COURT: All right.

GILBERT VALENZUELA,

was recalled as a witness, and further testified:

ON REDIRECT EXAMINATION:

Plaintiffs' Exhibit 16, being the Spanish of Plaintiffs' Exhibit 17, constitutes a valid muniment of title according to the law of Mexico.

Plaintiffs' exhibit marked "P-17" is in words and figures as follows:

P. 17

PUBLIC NOTARIAL OFFICE NO. 3.
OF LIC.

1st TESTIMONIO of the protocolization (Recording) of a document in which there is set out, the areas, boundaries and geometric forms of the Properties "LA SANTISIMA", "VADO DE PIEDRA" and "SAN ANTONIO", in this State.

(Notarial Seal)

CHIHUAHUA, MEX. MARCH FIFTH NINETEEN HUNDRED TWENTY FOUR.

In the margin, stamps duly cancelled: also rubric of the subscribing Notary. In the center:

"NUMBER TWO HUNDRED FORTY FOUR. In Chihuahua on the fourth day of March, nineteen hundred twenty-four, I, Notary Public, Number three of this, the District of Morelos, Licenciado Victor de la Garza Prado, and with the acting witnesses, Manuel J. Pardave and Juan D. Lopez, both of adult age, residents of this city, married, and first a chemist, and with domicile at Number two hundred ninety eight Fourth *Stree*; and the second a merchant, with domicile in the Santo Nino District, proceed to record, at the request of Licenciado Antonio Horcasitas, of adult age, resident of this city, married, a lawyer, with domicile at Number four hundred seven Aldama Street, personally known to me, and qualified in my understanding to contract and assume obligation, the Notarial document executed by Mr. Ignacio Macmanus in Los Angeles, California, United State*d* of America, on the second day of January, nineteen hnudred twenty-four, before the Notary Public Oraetta G. Ehlers and by which document the said Ignacio Macmanus, in compliance with the provision of the fifth clause of the instrument which under date of December sixth, eighteen

hundred eighty six, and in the City of Mexico, executed with Bennett H. Davis, transferring to the latter the properties "La Santisima", "Vado de Piedras" and San Antonio, of this State, sets out the area, boundaries and geometrical form of such properties, giving the description thereof; to which effect, I add to the respective appendix and with the number of this proceeding the before mentioned document, consisting of eight sheets besides six maps, three will remain in the protocolo or record office and the other three will be added to the first teatimonio, which taken from this Minute, may be issued. No fees are assessed. To which I certify. M. J. Pardave. J. D. Lopez. V. Garza Prado. Rubrics. My authorizing Notarial seal."

THIS INSTRUMENT, executed in the City of Los Angeles, State of California, United States of America, on the 2nd of January, 1924 by IGNACIO MACMANUS, widower, 72 years of age, *retired*, resident of this city and qualified to contract and assume obligations, VERIFIES AND STATES THAT, (a) IN AS MUCH AS in the instrument that transferred in the City of Mexico, on December 6, 1886, before the Notary Public, Jose Maria Velazquez, Thomas Macmanus, as attorney in fact of Ignacio Macmanus, alienated in favor of Bennett H. Davis, represented by Telesforo Garcia, the properties known as "LA SANTISIMA", "VADO DE PIEDRA", together with their "demasias (excess lands), and "SAN ANTONIO", the first located in the former Bravos Canton or District and the last two in the former Canton or District of Ojinaga, of the State of Chihuahua, Mexican Republic. (b) IN AS MUCH AS in the fifth clause of said instrument the following was stipulated: "It not being possible to itemize in this instrument all the boundaries of the properties in question nor the geometrical form of same, it is agreed: That to the end that the in-

scription of this contract that is set out in the respective Public Register, may contain all the legal requirements, ratification first made of this instrument, will present the testimonio thereof together with a supplement which explains those requirements and even the corresponding maps. (c) IN AS MUCH AS Bennett H. Davis ratified the transfer mentioned in the inscription, according to the instrument which passed in the City of Chihuahua, on the 20th day of December 1886, before the Notary Publci, Ignacio Elores; but had not at that time the data relative to the boundaries of the said properties nor the corresponding maps: THEREFORE, in order to comply with the requirements stipulated in the fifth clause and of which there was duly made the inscription of the said instrument of December 6, 1886, in the Public Registry of Property which corresponds to the location of the said properties, FIRST. Ignacio Macmanus states that the description of the properties alienated in his name in favor of Bennett H. Davis by the said instrument of December 6, 1886, is as follows: a). The property known as "LA SANTISIMA" has an area of one hundred eighteen thousand eight hundred ninety one (118,891) hectares, ninety-five (95) ares, and sixty-six (66) centiares, and its perimeter is formed by the following lines: Beginning at a monument which is marked on *eht* map by Number 2, which is the northwest corner of the property, and that it has the following outlines: N. 86—54 W. to the Navajo hill and S. 16° 30′ E. to the Amargosa mountain; running S. 20° 00′ E., 4,525 meters; thence running S. 63° 20′ E., 17,430 meters; running S. 50° 30′ E., 2,608 meters continuing S. 43° 00′ E., 12,486 meters, bordering in the full extent of the lines above described with the lands of the Rey Brothers. From the last point indicated, running S. 61° 00′ E. 14, 933 meters; thence running S. 61° 30′ E., 14,610 meters;

thence S. 48° 00′ E., 7,500 meters; thence running S. 68° 00′ E., 3,569 meters; and immediately running S. 22° 30′ E., 6,301 meters; and thence S. 8° 00′ E., 6,058 meters, and thence running S. 20° 00′ E., 18,477 meters; with this measurement reaching the southwest corner of the property, the above lines bordering on lands of Zone III of the old Valenzuela concession. From the southwest corner of the property, following the measurement running N. 69° 30′ E. to the right margin of the Bravo del Norte, the distance on this line being 8,380 meters, having as adjacent lands, the lands of San Antonio. Then following the measurements along the edge of the river, following all its meanders up the river, with the following directions and distances: N. 80° 00′ W., 259 meters; N. 37° 00′ W., 2,933; N. 04° 30′ E., 988 meters; N. 48° 30′ W., 712 meters; N. 18° 30′ E., 1,194 meters; N. 17° 00′ W., 1,780 meters; N. 18° 00′ E., 1,097 meters; N. 35° 15′ W., 1,231 meters; N. 15° 30′ E., 1,248 meters; N. 72° 30′ W., 1,307 meters; N. 05° 00′ E., 2,078 meters; N. 44° 00′ W., 1,223 meters; N. 15° 00′ W., 1,198 meters; N. 65° 30′ W., 1,131 meters; N. 02° 30′ W., 1,298 meters; N. 34° 39′ W., 1,743 meters; N. 52° 00′ W., 1,114 meters; N. 05° 00′ W., 1,307 meters; East-West 1,508 meters; N. 89° 00′ W., 2,681 meters; N. 38° 00′ W., 963 meters; S. 67° 00° W., 1,340 meters; N. 60° 00′ W., 838 meters; N. 25° 00′ W., 1,424 meters; South-North 838 meters; N. 05° 30′ W., 3,695 meters; N. 65° 00′ W., 2,220 meters; N. 13° 30′ W., 1,013 meters; S. 85° 00′ W., 2,220 meters; N. 43° 00′ W., 1,106 meters; S. 67° 00′ W., 1,290 meters; N. 52° 00′ W., 1,592 meters; N. 13° 30′ W., 1,453 meters; S. 85° 00′ W., 1,122 meters; N. 10° 00′ W., 1,181 meters; N. 80° 00′ W., 938 meters; N. 21° 00′ W., 1,877 meters; S. 85° 00′ W., 963 meters; N. 14° 30′ W., 2,272 meters; N. 81° 00′ W., 3,708 meters; N. 59° 30′ W., 1,220 meters; N. 18° 00′ E., 2,530 meters; S. 61°

30′ W., 2,153 meters; N. 30° 00′ W., 2,933 meters; S. 61° 30′ W., 2,061 meters; N. 59° 30′ W., 820 meters; N. 24° 00′ E., 1,914 meters; N. 32° 00′ W., 537 meters; S. 50° 00′ W., 1,230 meters; N. 81° W., 1,349 meters; S. 65° 00′ W., 1,583 meters; N. 42° 30′ W., 4,692 meters; S. 64° 00′ W., 3,000 meters; N. 15° 00′ W., 1,349 meters; N. 37° 30′ W., 796 meters; N. 32° 30′ W., 1,567 meters; S. 81° 00′ W., 1,583 meters; N. 09° 30′ W., 1,257 meters; N. 86° 00′ W., 1,851 meters; N. 55° 00′ W., 1,592 meters; N. 13° 45′ W., 2,371 meters; N. 59° 00′ W., 779 meters; N. 10° 00′ E., 1,005 meters; N. 80° 00′ W., 1,018 meters; N. 04° 30′ W., 1,047 meters; S. 89° 00′ W., 703 meters; N. 56° 00′ W., 5,254 meters; N. 23° 00′ W., 1,005 meters; N. 52° 30′ W., 1,904 meters; N. 56° 46′ W., 2,141 meters; N. 04° 43′ E., 1,139 meters; N. 68° 44′ W., 2,062 meters; N. 01° 02′ E., 863 meters; S. 65° 25′ W., 1,093 meters; N. 68° 20′ W., 2,202 meters; N. 62° 49′ W., 1,937 meters; N. 44° 44′ W., 1,690 meters; N. 54° 07′ W., 2,853 meters; N. 32° 52′ W., 1,478 meters; N. 46° 49′ W., 1,328 meters; N. 84° 30′ W., 1,601 meters; N. 62° 59′ W., 1,950 meters; N. 89 ° 04′ W., 1,442 meters; N. 15° 46′ W., 1,881 meters; N. 46° 52′ W., 1,079 meters; S. 83° 48′ W., 1,451 meters; N. 49° 44′ W., 1,262 meters; N. 86° 21′ W., 2,783 meters; N. 69° 14′ W., 2,068 meters; N. 49° 09′ W., 2,961 meters; N. 47° 01′ E., 775 meters; N. 69° 14′ W., 2,053 meters; S. 87° 41′ W., 1,195 meters; N. 20° 15′ W., 823 meters; N. 62° 43′ W., 2,185 meters; N. 15° 50′ W., 2,035 meters; N. 15° 50′ W., 2,035 meters; N. 05° 05′ E., 1,450 meters; reaching with this last measurement the point marked on the map with Number 43, (43?), which is the northeast corner of the property; following from this point, running S. 44° 15′ W., for a distance of 8,380 meters to the point of beginning, this last line bordering on the lands of Colonia del Provenir, which formerly belonged to Mrs. Fracisca Mellado and to Mr. Louis Flenchler

(Fenchler). B. The property known as "Vado de Piedra", including the demasias (excess lands) of Vado de Piedra, has an area of twenty-three thousand three hundred forty-three (23,343) hectares, thirty-eight (38) ares and forty-eight (48) centiares, and its perimeter is formed by the following lines; Beginning at a monument which is on a hill with outlines N. 27° 28′ W., to the Ventanas Mountain, and S. 03° 10′ E., to the Escalera Mountain, and which on the attached map is marked with number 27, following the direction N. 82° 40′ E., for a distance of 4,560 meters of the edge of the Bravo River, adjacent in its full extent with lands of "San Antonio; from this last point, following down the river, along the edge of the Bravo del Norte River, through all its meanders, with the following directions and distances: S. 12°00′ E., 1409 meters; S. 29° 57′ W., 1,918 meters; S. 14° 00′ E., 2,168 meters; North-South 3,432 meters; S. 46° 30′ W., 2,081 meters; S. 32° 29′ E., 1,242 meters; S. 02° 35′ W., 2,106 meters; S. 11° 50′ W., 1,934 meters; S. 09° 12′ W., 2,118 meters; S. 11° 30′ E., 1,530 meters; S. 15° 59′ E., 1,285 meters; S. 05° 46′ E., 954 meters; S. 05° 46′ E., 1,132 meters; North-South, 600 meters; S., 48° 30′ E., 650 meters; S. 12° 02′ E., 915 meters; S. 28° 01′ E., 786 meters; S. 25° 03′ E., 1,400 meters; S. 38° 57′ E., 1,638 meters; S. 11° 04′ E., 1,464 meters; S. 55° 29′ E., 1,009 meters; S. 06° 33′ E., 1,122 meters; S. 50° 32′ E., 2,329 meters; S. 17° 25′ E., 1,720 meters; S. 40° 54′ E., 1,463 meters; S. 11° 58′ E., 2,352 meters; S. 61° 01′ E., 2,073 meters; S. 32° 33′ E., 1,091 meters; S. 18° 00′ E., 2,450 meters; S. 42° 00′ E., 2,032 meters; S. 04° 53′ W., 1,570 meters; S. 43° 58′ E., 2,548 meters; North-South 1,315 meters; S. 13° 05′ E., 4,419 meters; reaching with this last measurement the point which on the map is number 65, which corresponds to the southeast corner of the property; from this point marked on the map num-

ber 1, which is the southwest corner of the property, adjacent in all this line with the Buena Vista*t* Ranch; from this last point running N. 19° 20′ W., 59,216 meters to reach the point marked on the map with number 25, which is the northwest corner of the property; from this point running N. 82° 40′ E., 5,210 meters to reach the point of beginning. The adjacent property of these two last lines is Zone II of the old Valenzuela Concession. (c) The property known as "San Antonio" has an area of fifteen thousand six hundred eighty-one (15,681) hectares, thirty-seven (37) ares and thirty-two (32) centiares, and its perimeter is formed by the following lines; Beginning at a monument which is on a hill with the outlines N. 27° 28′ W., to the Ventanas Mountain, and S. 03° 10′ E., to the Escalera Mountain, which on the map is marked with O- and which is the southwest corner of the property, taking the direction N. 20° 00′ W., with a distance of 7,190 meters; thence running N. 15° 20′ W., 10,094 meters; following the direction N. 05° 20′ W., for a distance of 7,228 meters, and thence running N. 25° 00′ W., 8,964 meters, bounding by these four lines the Zone II of the old Valenzuela Concession; from the last point indicated running N. 20°00′ W., 11,584 meters to reach the point marked on the map number 18, which is the northwest corner of the property, bounded by this line the Zone I of the old Valenzuela Concession; following from the Northwest corner, running N. 35° 00′ E., 8,380 meters to reach the bank of the Bravo del Norte River at the point marked on the map number 20, which is the northeast corner of the property, bounding by this full line the lands of T. O. Ranch, which formerly belonged to the lands of "La Santisima"; from the northeast corner following down the river by the bank of the Bravo River with all its meanders, *with all its meanders,* with the directions and following distances; S. 04° 00′ W., 2,022

meters; S. 24° 00′ W., 2,124 meters; S. 15′ 31° W., 883 meters; S. 56° 48′ W., 1,268 meters; S. 19° 00′ W., 1,421 meters; S. 24° 10′ E., 2,209 meters; S. 25° 42′ E., 3,196 meters; S. 44° 14′ E., 1,360 meters; S. 27° 21′ E., 2,156 meters; S. 05° 00′ W., 1,992 meters; S. 46° 45′ E., 2,140 meters; N. 73° 05′ E., 1,032 meters; S. 01° 00′ E., 1,663 meters; S. 07° 45′ E., 1,811 meters; S. 14° 27′ E., 3,926 meters; North-South 2,526 meters; S. 08° 33′ E., 2,904 meters; S. 06° 50′ E., 2,881 meters; S. 00° 55′ W., 2,676 meters; S. 69° 32′ E., 2,638 meters; S. 36° 09′ W., 2,495 meters; S. 34° 40′ E., 2,783 meters; S. 12° 38′ E., 2,558 meters; S. 40° 53′ E., 1,920 meters; S. 04° 32′ E., 1,402 meters; S. 26° 41′ E., 1,831 meters; reaching with this last measurement the point marked on the map with number 46, which is the southeast corner of the property; from this point running S. 82° 40′ W., 4,560 meters to reach the point of beginning, this last line bounding the "Vado de Piedra" property. SECOND. Ignacio Macmanus adds to this document, as an integral part of 61 three maps in order that the testimonios which are issued of its protocolization, or recording (in the Mexican Republic may carry with it the respective copy, namely: (a) Map of "La Santisima". (b) Map of "Vado de Piedra" and its demasias (excess lands). (c) Map of "San Antonio". THIRD. Mr. Alfred Shapleigh or any other co-owner of Bennett H. Davis acquiring the properties known as "La Santisima", "Vado de Piedra" and "San Antonio" or any portion of any of them, is authorized to petition protocolization and registration of the document in the Mexican Republic, the costs and corresponding taxes being for account of the soliciting party. Under the said condition Lic Antonio Horcasitas is expressly authorized to have protocolized and registered this instrument for account of any of the actual co-owners of the described properties, or of any portion of any

of them. IN TESTIMONY THEREOF I have placed my signature on this instrument on the day and place above mentioned. Ign. Macmanus. Rubric. STATE OF CALIFORNIA. COUNTY OF LOS ANGELES. ss. In the City of Los Angeles, State of California, United States of America, on the 2nd day of January, 1924, before me Oraetta G. Ehlers, Notary Public in and for said County of Los Angeles, and the witnesses who subscribe, all of lawful age, residents of this town and qualified to testify, Mr. IGNACIO MACMANUS, personally known to me, and first being duly sworn, the above instrument having been read to him, he declared that he signed same, and that he acknowledges it as his voluntarily free act. I, the Notary, certify that I advised the grantor that this instrument is an authentic document in accorance with the laws of the State of California, and as such he is fully bound to comply therewith. IN TESTIMONY WHEREOF, I have affixed my signature and official seal thereon on the date and at the place above mentioned. Jose Vera Estanol. Witness. K. E. Grant. Witness, Oraetta G. Ehlers. Notary Public. My Commission expires October 5, 1925.

STATE OF CALIFORNIA. COUNTY OF LOS ANGELES. ss. I, L. E. Lampton, County Clerk of Los Angeles, and ex-officio Clerk of the Superior Court of the State of California, in and for said county, which is a court of record of the said county, and under my lawful seal I certify by these presents that Oraetta G. Ehlers, whose name is subscribed to the certificate of acknowledge*d*ment, proof or declaration annexed, was on the date of such acknowledgement, proof or declaration a notary public duly commissioned and sworn, resident of said county, being therefore an office of said state, duly authorized by the laws in force therein to receive and certify to same, as well as to receive and certify to oaths

and acknowlege*d*ment of instruments and all instruments in writing that are recorded in such state, and that due faith and credit should be given to all her official acts, furthermore I certify that I know her writing and I truly believe that the signature placed on the annexed certificate is her true signature, and also that the instrument annexed is executed and acknowledged in conformity with the laws of the State of California. IN TESTIMONY WHEREOF, I have signed the instrument and placed thereon my official seal on the 3rd day of January, 1924. L. E. Lampton. County Clerk and ex-officio Clerk of the Superior Court of the County of Los Angeles, State of California. A seal reading: Oraetta G. Ehlers. Notary Public. Los Angeles Co. Cal. A gilt seal reading Superior Court. Los Angeles County. California. A raised seal reading: Mexican Consulate, Los Angeles, Calif. United Mexican States. The National Emblem. NUMBER 0532. Fees, $5.00. Mexican Consular Service. The subscriber Leandro Garza Leal. Mexican Consul in this City, certifies that the signature above is that of L. E. Lampton, Secy. of the Sup. Court of this county, and the same which he is accustomed to use all the documents which authorizes, to which due credit and faith must be given. Los Angeles, Cal. January 3, 1924. L. Garza Leal. A gold seal with the National Emblem, which reads: Department of Foreign Relations. Mexico. United Mexican States. Stamps to the amount of fifty-five centavos duly cancelled. Number 241. The undersigned Chief Clerk of Foreign Relations, CERTIFIES: That Sr Leandro Garza Leal was Mexican Consul in Los Angeles, Cal., E. U. A., on the 3rd day *fo* January, Nineteen Hundred Twenty-four, and his the signature above. Mexico, January thirty-one, Nineteen Hundred Twenty-four. Signature illegible. Stamps to the

amount of eleven pesos duly cancelled with the seal of the said Department of Foreign Relations.

This is the first "testimonio" (certified copy) issued for Lic. Antonio Horcasitas in four sheets, and in Chihuahua on March fifth, Nineteen Hundred Twenty-four. To which I certify. Signed V. Garza Prado. Rubric. (Seal of the Notary Victor de la Graza Prado., Chih.) Seal of Central Office of Public Registry, Morelos Dist., Chihuahua.

Presented for its inscription this date at nine o'clock. April 11, 1924.

The Registrar.
(Signed) LIC. RAFAEL SETRIEN SIERRA
(Rubric)

Registered together with the "Testimonio" of sale for whatever may refer to the property Vado de Piedra and its demasias (excess lands) under number 100 at folios two hundred seventeen and the following of book ninety-eight of the First Section, recording the property under number six thousand four hundred thirty-four. Chihuahua, April 14, 1924. To which I certify. Between lines. And demasias. Valid. To which I certify. The Registrar. (Signed) *Rafael Setrien Sierra.* (Rubric) Same seal as above.

Registered, together with the "testimonio" of sale and for whatever may refer to the property "San Antonio" under number fifteen at folios thirty-one and following of book number ninety-nine of the First Section, recording the property under number six thousand eight hundred eight. Chihuahua, May seventeenth, Nineteen Hundred Twenty-four. To which I certify. The Registrar. (Signed) Rafael *Strien* Sierra. (Rubric). Same seal as above.

Presented for inscription by Lic. Felipe Seijas at eleven o'clock of the tenth day of June, Nineteen Hundred Twenty-four. Officer in Charge of the Public Registry of Property. Signed F. P. Silver.

Seal reading: "Civil Court of Bravos District, Ciudad Juarez, Chih., United Mexican States." National Emblem in Circle.

On this day this document was inscribed under number eighty-one (81) on folios two hundred fifty-one (251) to two hundred sixty (260) of book number thirty-four (34) of the First Section.

C. Juarez, June 13, 1924.

The First Minor Judge in Office of the First Instance of the Civil Court in Charge of the Public Instruments of Property. (Signed) F. P. SILVA (Rubric)

(Seal reading: "Civil Court of Bravos District, C. Juarez, Chih. United Mexican States." National Emblem within the Circle.

There is a statute in Mexico which provides, substantially, that where a transfer of real estate appears on its face to be valid, and is properly recorded and registered, that no one can object to the validity except a party to the transaction; strangers are precluded from making any objection. That is Article 1543 of the Civil Code of the State of Chihuahua of 1898, in force today, which reads: "The action and the exception to void or nullify an obligation corresponding to the parties and their grantees, except those cases in which the law establishes expressly something to the contrary:" According to this article the action of another man could be one complained exclusively to the parties to this contract, and the grantees in this contract, or to the legal successor of

them. Nobody outside of this has the right or the action to urge nullification.

Article 3088 of the Civil Code of Chihuahua provides that the acts and contracts that according to the law should be registered will not produce effect against a third party if they were not registered, but they produce all of the effect between the parties with the only exception of Article 1760, which makes reference specifically to the registration of mortgages. According to this article registration of the title does not give and does not acquit any legality, any legal effect to the title and to the connection between the parties.

In my opinion the description in this instrument, exhibit 16, is fully complete and covers everything in the case. It is a well settled principle of International Law that the form and external solemnities of any judicial act is ruled by the law of the place where the act is executed or performed. This is a principle of International Law accepted everywhere by all civilized countries. Real estate statute, the personal statute, and the form statute, Mexico, and all of the States of Mexico, accept from the year 1870 the statute in the law establishing first that the legal conditions and capacity of the persons is ruled by the law of the country. This is the personal statute. Second, the real estate statute proclaims that the legal condition of any real estate property is ruled by the law of its location. And the form statute, that the form and external formalities of any act is ruled by the law of the place where the act is performed or executed. Article 12 of the Civil Code of the State of Chihuahua establishes the form or external solemnities of contracts, wills and any other public instrument will be ruled by the law of the place in which it has been executed. According to this article the instrument executed in Los Angeles by *Mc.* Macmanus is perfectly according to law of the

State of Chihuahua in regard to the form and external solemnities required. Said instrument is according to the law of Mexico because it has been first duly verified by the Mexican Consul and for the Foreign Secretary of Mexico, and has been protocolized in the State of Chihuahua, and registered in the Public Registry of Chihuahua by the same authority of the State of Chihuahua. In this condition the instrument covers all of the angles of the law, and is perfectly legal in the State of Chihuahua. If they had not been registered it would have been equally valid and equally legal because it is notification to a third party to the legal condition of the law, but does not affect in any way the obligation between the parties in any contract. My conclusion is it is perfectly legal and a good muniment of title.

(This witness temporarily excused to accommodate another witness).

A. P. COLES,

a witness for Plaintiffs, being first duly sworn, testified as follows:

ON DIRECT EXAMINATION:

My name is A. P. Coles. I have been in the real estate business in El Paso since 1888.

I knew Bennett H. Davis in his life time. I know A. L. Shapleigh.

I am familiar with the transaction whereby Bennett H. Davis sold to Shapleigh and associates some land in northern Mexico. I can't state the exact date I first met Mr. Shapleigh, but he came to El Paso a number of times, and I think he was here before 1897.

I knew Thomas Ranken, Jr. and Charles H. Peck. I

met all three of these gentlemen in El Paso. Ranken came to my office, also Mr. Shapleigh, and I think Mr. Peck came to the office. My firm acted as agents for those three gentlemen after they acquired the Mexican Property. I had been agent for Mr. Ranken on some city property here before that. I am not sure whether Mr. Shapleigh and Mr. Peck had any interest in that property or not. My duties or work with Mr. Shapleigh and Mr. Peck, and also Mr. Ranken until his death, was in looking after this Mexican land after they bought it from Davis. I paid the taxes on the land each year, and was trying to sell it or lease it. They were not anxious to sell at the beginning; they would have sold later.

I had the tract known as La Santisima surveyed by Cardona, as agent for Shapleigh, Ranken and Peck. They sent me the money, and I paid for it. When I paid the taxes I got the money from Mr. Shapleigh. One time I think before Mr. Ranken died he sent me the money. Then Mr. Shapleigh took it up and looked after it, sent the money for paying the taxes, and I sent the tax receipts to him. I commenced paying the taxes either in 1898 or 1899. It seems to me it was around 1927 I paid the taxes last, but I am not positive as to the year.

We had several opportunities to lease La Santisima, putting people on it to cultivate it, and then we heard there were some squatters had gotten on it, and we wanted to find out whether that was true or not, and get them off; so we had it surveyed, and had Mr. Cardona do the work.

I paid the taxes on this property by direction of Shapleigh, Ranken and Peck, and with their money. I employed Cardona to survey the land, and paid him with their money. Cardona completed the survey, and provided me with a map. I sent a copy of the map to Mr. Shapleigh, and I think a copy to Judge Haff, in Kansas

City, who was Mr. Shapleigh's attorney for this land at the time, and I think I have one in the office now.

Values of land have changed so much in the last few years it is a little hard to give you an exact valuation of the land involved in this particular suit, known as El Guayuco Banco. Prior to that time, or around that time, a great deal of the land in that section got up as high as $200.00 an acre; there was land down there also as low as $100.00 an acre, and some was less than $100.00 an acre. I think there was some land that could have been had around $50.00 an acre, American money. That was uncleared, but good land, subject to cultivation. I would say it would range somewhere between $50.00 and $100.00 an acre at present.

ON CROSS EXAMINATION:

The Bennett H. Davis referred to was Major Bennett H. Davis, brother of Captain Charles Davis, the head of the firm of Davis, Beall & Kemp. He died along about 1898. I was at the funeral.

I suppose I have known Mr. Delbert H. Haff, a lawyer of Kansas City, fifteen or twenty years. He was not attorney for these parties, that I know of, during all of that time. We had been trying to lease this land, and in fact had made a contract to lease this land for farming, and then shortly after that we discovered some squatters had gotten on it, and Mr. Shapleigh employed Judge Haff to come down and look into it, and I think he went to the City of Mexico. As near as I can fix it that was just after we stopped paying taxes. I am not sure whether the tax assessor refused to take the taxes or whether we stopped, but I had advised Mr. Shapleigh not to pay them until we got that settled. Feiipe Seijas and his partner went to the City of Mexico on the question. I

don't know when Mr. Haff first became attorney of Mr. Shapleigh. I do not know whether he was their attorney in other legal matters.

I think I know that some of the land that is today on the east or American bank of the Rio Grande is or was a part of the La Santisima tract. I know that the river cut part of the land off, and we were trying to look after it as we had looked after the whole tract of land, and I notified Mr. Shapleigh that part of the land had been cut off by the river. I couldn't give you the exact date I notified him. About the time it was cut off I wrote him about it, and told him that the land should become more valuable.

I think I have been on the land that was on this side since it was cut off. That has been several years ago. I usually sent somebody over on the other side to look after that land for me. I wasn't familiar with the country and the people, and I usually sent someone that could speak Spanish. I never had any trouble about it. I did not take the chance of going on it; it was bosques, and I didn't want to get lost. We were trying along that time to arrange some way to get water on the land, quite a long time, to cultivate such land as was subject to cultivation, and we made a lease of the land to some party to put it in cultivation. That lease, however, was made subject to our getting water to irrigate the land, and squatters began to get on it and stopped us. That is just people who were taking it to cultivate it, and didn't want to be interfered with.

Judge Haff and I worked together when he was here, we got up all the data and the titles, maps and everything concerning the land, and he took those with him to the City of Mexico. We never had any trouble with the lands whatever, no dispute in regard to the title of it, until these squatters began to get on there, and Judge

Haff was employed by Shapleigh to look after it and get them off. He went down to Chihuahua on the matter; I am not sure but what he took Mr. Cardona with him down there, and he also went to the City of Mexico, made one or two trips. I understood that he instituted a suit, but I couldn't say of my own knowledge. I don't know whether he filed the suit in the City of Mexico or in Chihuahua, but my understanding was he even went to see the President of Mexico. He was down here for the purpose of filing a law suit. He had full charge of the legal end of it, and all I could do was to assist him as the attorney for Mr. Shapleigh.

I knew Mr. Antonio Horcasitas. I couldn't tell you just the position he had. I couldn't tell you whether he ever represented them or not, and Mr. Haff, as attorney, had full charge of employing the attorneys, and I don't know who he employed outside of Mr. Seijas.

(Witness excused).

Plaintiffs offered in evidence their exhibits 18 and 19, No. 18 being a Spanish deed, dated February 13, 1897, whereby Bennett H. Davis conveyed La Santisima to Alfred H. Shapleigh, Thomas H. Ranken, and Peck, and No. 19 being English translation thereof.

COUNSEL FOR DEFENDANT: In addition to the objections heretofore made to the other instruments, which are here reserved, this is objected to for the reason that it appears on its face that it was never filed for record until after the Agrarian Law of the State of Chihuahua had gone into effect, and that it does not comply with the requirements of that law for its registration, in the absence of which it would not be valid. For the further reason it affirmatively appears in the instrument itself it lacks the

essential requirements as the evidence now before the Court shows there was no mutual consent or execution of the paper, which under the statute of the State of Chihuahua is the second essential to the validity of an instrument of this character; and, generally, that the instrument shows upon its face that it does not comply with the statutory requirements of the Code of the State of Chihuahua in regard to deeds for the transfer of real estate in excess of $500.00 in value, and does not at this time show real compliance with the law containing a permit to hold land within the prohibited zone.

To meet the above objection plaintiffs offered in evidence their exhibits 20 and 21, No. 21 being permit for Alfred L. Shapleigh, et al, to own property in Mexico, and No. 21 being English translation thereof.

COUNSEL FOR DEFENDANT: In addition to the objections heretofore made this instrument appears upon its face to have tendered for registry and registered after the adoption of the Agrarian Law of the State of Chihuahua, and without compliance with the requirements of that law, a condition precedent to the registration or to the validity of that.

The documents above introduced were marked as indicated, and the English translations of said documents, same being marked "P-19" and "P-21", being in words and figures as follows:

P. 19

SOSTENES RODRIGUEZ
NOTARY PUBLIC

Original exemplification
of the writing of December 2, 1897,
executed by .....
in favor of .....

LA SANTISSIMA

Chihuahua
1897.

Corrected. (a rubric)

Number Thirty-two.

At *D*iudad Juarez, State of Chihuahua, on the 2nd day of the month of December, 1897, I, the undersigned notary public, Sostenes Rodriguez, proceeded to protocolize the proceedings which, in seven folios and with official communication No. 836, of yesterday's date, were transmitted to me for this purpose by the Citizen Judge of Letters of this district.

The proceedings contain: a petition subscribed by Mr. A. L. Shapleigh wherein he prays that the documents which he accompanies thereto be protocolized; an order of yesterday's date directing that the protocolization be done; and instrument written in English, executed the 13th day of February of the present year, and authenticated on the same day at El Paso, Texas, by the notary H. R. Wood, and according to which Mr. Bennett H. Davis sold the lands that it describes, for ten dollars, to Messrs. Thomas Rankin, Jr., Charles H. Peck and Alfred L. Shapleigh; and the translation of the instrument.

The official communication and the proceedings aforesaid are added to the appendix of this protocol at pages 113 to 120, and, at pages 121, 122 and 123, of the same appendix, is added the note returned by the office of Stamp Revenue, with cancelled stamps of the value of 70 centa-

vos; the statement that the fees due the State have been paid, and that the contractors herein owe no taxes.

The witnesses were Messrs. Sebastian Vargas, hijo, and Jose Benitez, the former being a married man and the latter a single man, both of legal age, of this locality, employes who, I certify, are well known to me, and they sign. I certify.

JOSE BENITEZ,
S. VARGAS, hijo,
SOSTENES RODRIGUEZ.

Seal: "Sostenes Rodriguez,
Notary Public,
State of Chihuahua."

Seal: "Court of Letters of the District of Bravos, Chihuahua."

No. 836. I have the honor of transmitting to you in seven sheets, for the effects of the order of this date, the proceedings concerning the protocolization of the contract of sale of some lands, executed the 13th day of February, last past, by Mr. Bennett H. Davis in favor of Mr. Alfred L. Shapleigh and associates.

Liberty and Constitution. Ciudad Juarez, December 1, 1897.

LEON Y. ARANA.

Cit. Notary Sostene Rodriguez,
Present.

A cancelled 50-centavo stamp.

"Citizen Judge of *Leters;*

I, Alfred L. Shapleigh, a North American citizen, of legal age and a resident of St. Louis, Missouri, before you respectfully represent: The document, duly legalized and translated, that I present herewith, authenti-

cated in the City of El Paso on February 13 of this year by the notary H. R. Wood, conveys to me the property that in said document is described, and it conveys it also to Messrs. Thomas Rankin, Jr., and Charles H. Peck. And desiring that said document be protocolized before a notary, I come before you and pray that: upon approval by the expert translator, Mr. Carlos H. Peck, of this city, you be pleased to order the protocolization in the notarial office of Senor Sostenes Rodriguez, and that he may issue to the interested parties the exemplifications that they may request. I affirm all things, as may be necessary, and receive notifications at the notarial office of the said notary, Sostenes Rodriguez.

C. Juarez, November 19, 1897.

A. L. SHAPLEIGH.

Filed the 1st day of December at 12 o'clock, together with the documents to which it refers. Entry made. Campos.

Ciudad Juarez, December 1, 1897.

As prayed for by Mr. Alfred L. Shapleigh in his petition of the 19th of November, last past, upon approval and comparison of the translation of the instrument of sale of some lands, executed in his favor on the 13th day of February, this year, by Mr. Bennett H. Davis, protocolize the same in the office of the notary Sostenes Rodriguez, and Mr. Carlos Witte is named as expert. Notify.

It was decreed by the Judge of First Instance, Leon I. Arana. Manuel Campos.

On the same day Mr. Carlos E. Witte, a single man, of legal age, a merchant and resident of this city, being present, upon legal oath declared that he accepts the charge of expert that has been conferred upon him and

undertakes to perform that charge with fidelity, in virtue whereof, the deed, and its translation, referred to in the foregoing order, were exhibit*ing* to him, and after due comparison he approved the translation of the said instrument of sale executed by Mr. Bennett H. Davis in favor of Mr. Alfred L. Shapleight and associates; all of this under the oath taken by him. He affirmed and ratified the foregoing after it had been read to him, and he signed. Arana. C. E. Witte. Manuel Campos.

On the same date notice was affixed on the door of the courtroom to give notice to Mr. Shapleigh. Be it known. Campos.

On the same day these proceedings are transmitted, in seven sheets to the notary Sostenes Rodriguez. Entry thereof is made.

CAMPOS.

The State of Texas, County of El Paso, Known all men by these presents, that I, Bennett H. Davis of the County of El Paso, State of Texas, for and in consideration of the sum of ten dollars to me in hand by Thomas Ranken, Jr., Charles H. Peck and Alfred L. Shapleigh have granted, sold and conveyed and by these presents do grant, sell and convey unto the said Thomas Ranken, Jr., Charles H. Peck and Alfred L. Shapleigh, all of the City of St. Louis, State of Missouri, all that certain upper thirty-two 2/5 one hundred part of the La Santissima grant situated in the State of Chihuahua, Republic of Mexico, described as follows: Beginning at the upper river corner of said La Santissima grant, a stake from which the north corner of Presidio Viejo bears S. 44° 15" West, 3100 varas. Thence South 44° 15" West at 1475 varas cross a running *stram* 2910 varas edge of valley 4621 varas top of foot hills 10000 varas to a pile of rocks on a stony point, thence S. 35½°

State of Texas, County of El Paso, Known all those who these presents may see, that I, Bennett H. Davis, of the County of El Paso, State of Texas, for and in consideration of the sum of Ten dollars, paid to me by Thomas Ranken, Jr., Charles H. Peck and Alfred L. Shapleigh, have granted sold and conveyed, and by these presents do grant, sell and convey unto the said Thomas Ranken, Charles H. Peck, and Alfred L. Shapleigh, all residents of the State of Missouri, all the upper part that comprises one thirty-two and 2/5 hundredths part of the La Santisima grant in the State of Chihuahua, Republic of Mexico, described as follows: Beginning at the upper point of said La Santisima grant that corners on the river where there is a stake, whence Southerly 44° 15" West, the north corner of Presidio Viejo, 3100 varas; thence South 44° 15" West 1475 varas, and crossing a running stream 2910 varas to the edge of the plain 4621 varas to the top of the

E. 5400 varas to a pile of rocks; thence S. 45° E. 20800 varas to a pile of rocks in a ravine; thence S. 29° E. 4320 varas cross a ravine 12735 varas another 15200 varas to a pile of rocks on the west slope of a hill; thence S. 50½ E. 12987 varas to a pile of rocks for lower south-east corner of the survey. Thence N. 40° E. 10000 varas to a stake on the bank of the Rio Grande river, thence up the Rio Grande as follows: N. 52½° W. 1640 varas, N. 3½ W. 2060 varas N. 89° W. 1930 varas, N. 18½ W. 1000 varas, N. 46° W. 2780 varas, N. 75½ W. 3970 varas, N. 10° E. 1540 varas, N. 69° W. 925 varas, N. 9° E. 1600 varas, N. 32° W. 1510 varas, N. 6½° W. 3150 varas, N. 69° W. 812 varas, N. 27½° W. 4100 varas, N. 66½° W. 950 varas, N. 7½° W. 1300 varas, W. 1500 varas to a point opposite Fort Quitman, Texas, S. 50° W. 630 varas N. 40° W. 2110 varas, N. 27° E. 1900 varas, N. 60° W. 1420 varas, S. 85° W. 2920 varas, N. 47° W. 5870 varas, N. 17° W. 2830 varas, S. 79° hills and 10000 to a pile of rock on a stony point; thense S. 35½° E. 5400 varas to a pile of rocks thence S. 45° E. 20800 varas to pile of rocks in a ravine; thence S. 29° E. 4320 varas crossing a ravine 12735 varas and another 15200 varas to a pile of rocks on the west slope of a hill; thence S. 50½ E. 12987 varas to a pile of rocks that marks the S. E. Lower corner of the survey. Thence N. 40 ° E. 10000 varas to a stake on the bank of the Rio Grande; thence up the river as follows: N. 52½° W. 1640 varas, N. 3½ W. 2060 varas N. 89° W.
1930 varas, N. 18½ W. 1000 varas, N. 46° W. 2780 varas, N. 75½° W. 3970 varas, N. 10° E. 1540 varas, N. 69° W. 925 varas, N. 9° E. 1600 varas, N. 32° W. 1510 varas, N. 6½° W. 3150 varas, N. 60° W. 812 varas; N. 27½° W. 4100 varas; N. 66½° W. 950 varas; N. 7½° W. 1300 varas; W. 1500 varas to a point opposite Fort Quitman, Texas; S. 50° W. 630 varas; N. 40° W. 2110 varas; N. 27° E. 1900 varas; N. 60° W. 1420 varas; S. 85°

W. 1000 varas, N. 10° E. 1580 varas, N. 46° W. 4800 varas, W. 1840 varas N. 5° W. 2275 varas, West 2310 varas. N. 45° W. 1000 varas, N. 15° E. 2110 varas, N. 45° W. 480 varas, to the beginning, containing ninety-five thousand two hundred and four (95,204) of acres of land. And I hereby convey and grant unto the said Thomas Ranken, Jr., thirty-two eighty-one parts; unto Charles H. Peck twenty-five eighty-one parts, and unto Alfred L. Shapleigh twenty-four eighty-one parts of the above described lands, the same being the respective parts and undivided interest in and to the upper 32-2/5 100 parts of the La Santisima grant, located on the west bank of the Rio Grande River in the Bravos Canton State of Chihuahua Mexico.

To have and to hold the above described premises together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Thomas Ranken, Jr., Charles H. Peck and Alfred L. Shapleigh, their heirs

W. 2920 varas; N. 47° W. 5870 varas; N. 17° W. 2830 varas; S. 79° W. 1000 varas; N. 10° E. 1580 varas; N. 46° W. 4800 varas; W. 1840 varas; N. 5° W. 2275 varas; W. 2310 varas, N. 45° W. 1000 varas; N. 15° E. 2110 varas; N. 45° W. 480 varas, to the place of begininng comprising an area of ninety-five thousand two hundred and four acres of land. And I hereby convey and grant to the said Thomas Ranken, Jr.thirty-two and 81/100 part; to Charles H. Peck twenty-five 81/100 part, and to Alfred L. Shapleigh twenty-four and 81/100 part of the lands above described composing the respective parts to which the said persons are entitled in the 32-2/5 hundredths part of the La Santisima concession that lies on the west bank of the Rio Grande in the Bravos Canton of the State of Chihuahua, Mexico.

So that the said Thomas Ranken, Jr., Charles H. Peck and Alfred L. Shapleigh, and their heirs and assigns shall have and possess the property above described together

and assigns forever; and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend unto the said Thomas Ranken, Jr., Charles H. Peck and Alfred L. Shapleigh, their heirs and assigns, against every person whomso ever lawfully claiming or to claim the same or any part thereof by, through or under me.

Witness my hand this 13th day of February, A. D. 1897.

BENNETT H. DAVIS.

Witness at the request of Grantor; Lucille Edgamont Davis: Juan S. Hart.

The State of Texas, County of El Paso. Before me H. R. Wood, a notary public in and for El Paso County, Texas, in this day personally appeared Bennett H. Davis, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed. Given under my hand and seal of office with its rights and other things to it belonging; the undersigned binding himself and his heirs, his executors and administrators being also bound, to defend the title in favor of the said Thomas Ranken, Jr., Charles H. Peck and Alfred L. Shapleigh and their heirs and assigns, against any person who, in the name and representation of the grantor should lay any claim whatever.

In witness whereof I sign these presents on the 13th day of February, 1897.

BENNETT H. DAVIS.

Witnesses who sign at the request of the grantor. Lucille Edgamont Davis; Juan S. Hart.

The State of Texas, County of El Paso. On this day of the date aforesaid, before me, H. R. Wood, Notary Public of the County of El Paso, Texas, personally appeared Bennett H. Davis Who, I certify, is known to me and is the person who signed the foregoing instrument, having declared that he had executed the same

fice this 13th day of Feby. A. D. 1897. H. R. Wood, Notary Public in and for El Paso County, Texas. A seal: "Notary Public, County of El Paso, Texas.

Number 12. The undersigned Consul of the United States of Mexico, certifies: That H. R. Wood, whose signature foots the foregoing documents, is a notary public in office in the County of El Paso, Texas, and his the seal that authenticates the same, and, therefore, it should be giv*ne* full faith and credit.

In witness whereof I issue these presents at El Paso, Texas, this 13th day of February, 1897.

FCO. MOLLEN.

Fees $4.00. A seal that says "Consulate of Mexico, El Paso, Texas."

No. 727. The subscribing Under-Secretary of Foreign Affairs, Certifies: That Senor Don Francisco Mollen is Consul of Mexico at El Paso, and his signature appears above.

for the purposes therein expressed. And I make it known by signing and affixing my seal of office this 13th day of February, 1897. H. R. Wood, Notary Public of the County of El Paso, Texas. A seal of the Notary Public.

No. 12. The undersigned Consul of the United States of Mexico, Certifies: That Mr. H. R. Wood, whose signature foots the foregoing document, is a notary public in office in the County of El Paso, Texas, and his the seal that authenticates the same, and, therefore, it should be given full faith and credit.

In witness whereof I issue these presents at El Paso, Texas, this 13th day of February, 1897.

FCO. MOLLEN.

Fees $4.00. A seal that says "Consulate of Mexico, El Paso, Texas."

No. 727. The subscribing Under-Secretary of Foreign Affairs, Certifies: T*aht* Senor Don Francisco Mollen is Con-

Mexico, November 4, 1897. M. Azpiroz. A seal that says: "Department of Foreign Affairs, Mexico."

Six stamps of the aggregate value of four pesos and twenty centavos, cancelled by an ink seal of the Department of Foreign Affairs, Mexico.

sul of Mexico at El Paso, and his signature that appears above.

Mexico, November 4, 1897. M. Azpiroz. A seal that says: "Department of Foreign Affairs."

Six stamps of the aggregate value of four pesos and twenty centavos, cancelled by an ink seal of the Department of Foreign Affairs, Mexico.

Three stamps of the value of seventy centavos, cancelled by a seal that says "Main Stamp Office, C. Juarez."

The Chief Collector of the Stamp Tax at Ciudad Juarz, Certifies: That on this date the Citizen Sostenes Rodriguez paid seventy centavos, the value of the stamps affixed and cancelled on this note, in accordance with the computation made under the responsibility of the said notary. Cd. Juarez, December 2 -1897. The Chief Collector, M. A. Cuaron. The lands to which it refers are included in the rendition of B. Davis and Co. who have paid the State's fees and are up to date in the payment of their taxes. Ciudad Juarez, December 2, 1897. The Tax Collector, J. Garcia Cuadra. A seal: "State of Chihuahua, Office of the Tax Collector of Ciudad, Juarez."

Interlined: "the", "W. 1500 varas;" Cancelled: "to" "of the revenue". Not Good.

It agrees with the originals that appear in my protocol of this year, and in the respective appendix. This exemplification is issued in five sheets, stamped according to law, compared and corrected, for Mr. Alfred L. Shapleigh, after advising Mr. Charles Davis, who came requesting this matter, that to this title-deed there should be added the permit, which says was issued to the grantees by the General Government to acquire the lands referred to in the protocolized contract of sale; I also advised that this instrument should be recorded in the Public Registrar of Property, Ciudad Juarez, December 3, 1897.

Sostenes Rodriguez (Rubric)

A seal: "Sostenes Rodriguez.

State of Chihuahua.
Notary Public."

Filed for record, by Mr. Apolonio Sanchez, at 12 noon, of the 13th day of July, 1922. Be it known.

.....

(An illegible signature)

A seal: "District of Bravos, Public Register of Property, State of Chihuahua."

Recorded under No. 176, Book 29 of the First Section, folios 197 to 205. I certify.

C. Juarez, July 13, 1922.

The Judge of First Instance. Custodian of the Public Register.

.....

(An illegible signature)

A seal: "District of Bravos, Public Register of Property, State of Chihuahua.

TRANSLATOR'S NOTE

On the top left margin of each alternate sheet of the photostat from which this translation is made, there appears a one-peso documentary stamp cancelled by a seal that says "Sostenes Rodriguez, 3 ....., (Illegible)
Ciudad Juarez, ...:" (illegible)

and, beginning on the third page, each thereafter bears about one-half of a seal that reads: "Sostenes Rodriguez, State of Chihuahua, Notary Public," as if impressed half

on one sheet and half on another, at the side where they were joined in the original document.

I, J. N. Phillips, do hereby certify that the foregoing on 9½ pages is, according to the best of my knowledge and ability, a true and correct translation into English of the photostat document in the Spanish language that is attached hereto.

El Paso, Texas. (Original) (Signed) J. N. Phillips,
February 22, 1933. Translator.

In the margin: Seal reading "DEPARTMENT OF FOMENTO, COLONIZATION, INDUSTRY AND COMMERCE. MEXICO", with National Emblem within the circle. Also Section 1st. No. 1313; also two rubrics.
In the center: The Preisdent of the Republic has deemed proper to grant that there be conceded to you, as in effect there is conceded to you, the permission that you petition to acquire ownership of the following properties: "La Santisima" situated in the Former Canton of Bravos in the State of Chihuahua, on the eastern bank of the Bravo river, and those known as "San Antonio", "Vado de Piedra" and "El Comedor", situated in the Ojinage District of the same State; you being informed of the obligations which you contract and which are found set out in the laws of the Republic.

LIBERTY AND CONSTITUTION. Mexico, August 25, 1897.

(Signed) Fernandez Leal (Rubric)

To Messrs. Thomas Ranken, Jr., John J. O'Fallon, Charles H. Peck and Alfred Lee Shapleigh. Present.

Presented for its inscription by Apolonia Sanchez at 12 o'clock of the 13th day of July, 1922. Let it be recorded.

Signed. Rubric.

SEAL READING:
"BRAVOS DISTRICT
PUBLIC REGISTRY OF
PROPERTY
STATE OF CHIH*AUHAU*".

Registered under Number 176 of Book Number 29 of the First Section, folios 197 to 205. To which I certify.

Ciudad Juarez, Chih. July 13, 1922.

Judge of the First Inst., In charge of the Public Registry.

Signed. Rubric.

SAME SEAL AS ABOVE.

GILBERTO VALENZUELA,

was recalled by Plaintiffs, and further testified as follows:

ON REDIRECT EXAMINATION:

I have examined the document marked plaintiffs' exhibit 18. In my opinion that constitutes a valid muniment of title under the law of Mexico.

With reference to the objection of counsel that the instrument was not filed for record until after the passage of the Agrarian Law, the object of the registration is notification to a third party that the lands have been sold, and this notification made reference to guarantee of the interest of any third party, but does not affect registration validity of the instrument and the obligation established between the parties. The essential on the point is this: I have here the Civil Code of Chihuahua that was in effect from the 23rd day of November, 1882, which adopted the Civil Code of the Federal District of 1870, with-

out any qualification. This instrument was executed within the time this Code was in force. This provides: "In regard to the form or external solemnities of contracts, wills or of any other public instrument, it shall be ruled by the law of the place at which it has been executed." That is sanctioned by the personal statute. The form and external solemnities, form of any judicial act, contract, is ruled by the law of the place the acts have been executed and performed. This principle has been established especially by the Code of Chihuahua, in force from 1882 to 1898, and in force today. According to this principle, the form and external solemnities in which this contract shall be executed is the form established by the law of Texas, and in form that according to the law of Texas will be enough for transferring dominion of the land, is perfectly legal and will be accepted in Mexico. It is exactly the case in Mexico, all of the States, and for the Constitution. We have a kind of marriage there, and this marriage shall be executed before a public official called Judge of the Civil Registry. It is prohibited in the Mexican Constitution any marriage verified before any minister or any foreign Judge or any other religious authorities have no legal value in Mexico; nevertheless, Mexico has always recognized a marriage in the United States before a Catholic priest, or before a Protestant priest, notwithstanding the prohibition of the Constitution of Mexico. The external formalities of any judicial act is ruled absolutely by the law of the place where the act is executed. And in this case the formalities required as required by the law of Texas in order to transfer dominion, consequently if this contract had been executed according to the law of Texas this contract is perfectly legal with the law of Mexico, and especially with the law of the State of Chihuahua. Furthermore, this contract has been protocolized in Mexico, and registered in the State of

Chihuahua by the authorities, and Mr. Davis sold the land to Shapleigh and the other persons, and they asked personally the protocolization in the State of Chihuahua. This act of protocolization expressly implies ratification of this contract. The law of Mexico that raises this question, Article 15, authorizes the States to fix the form and solemnities. Supposing it be necessary consent was required. They have manifested consent in asking protocolization of this instrument, and this is ratification. There the fulfilment of the obligation, this is complied with just by the execution of the instrument, consequently this instrument has been ratified by the buyer in making the protocolization, and is already fulfilled by the *slle*r by delivery of the land.

Article 1791 of the Old Code, Code of the Federal District of 1870, adopted by the State of Chihuahua in 1882, corresponds with Article 1546 of the New Code: "When a contract may be void by threat or by mistake it may be ratified thereby curing the defects or reason for its nullity, provided no disposition contrary established in the law." Article 1792 of the Old and 1547 of the New: "Ratification and wilful fulfillment of a contract by means of payment, renewal or any other act or under other circumstances shall be considered as a ratification thereof, and thereafter it cannot be attacked and be declared void." And 1793 of the Old, and 1548 of the New: "The ratification and voluntary fulfillment of an obligation which could be void by reason of the lack of formality, in whatever time the same may be made, extinguish the right to have the same declared null and void, except in *thos* cases in which the law provides to the contrary."

All of this prescription of the Civil Code of Chihuahua corresponds, and the two Codes give perfectly legal value to these instruments.

In regard to the lack of registration, in the first place

the Agrarian Law has been enacted without jurisdiction, and consequently cannot be applied to the case. In the second place, that registration has been already made by authority of the State of Chihuahua. Third, the purpose of the registration is not to deny to any third person knowledge of the execution of this deed, and this purpose has been sound, this registration, notwithstanding the prescription of the Agrarian Law of the State. Fourth, registration in the Republic does not affect in any way the legality and validity of the sale between the parties to the contract, and this is supported by both Codes. In the old Code we find Article 3332, corresponding to Article 3088: "The acts and contracts that should be registered according to the law will not have effect against any third person if they have not been registered in the respective office." This is just to protect the interest of third persons, but does not affect in any way the validity of the act, and the obligation therein of the signers. For this reason I consider this instrument is perfectly legal according to the law of the State of Chihuahua, and consequently is a good title.

This answer corresponds to all of the documents that have been executed between 1882 and 1898 that have been reviewed by this Court. I have answered all questions based on the Civil Code of the Federal District of 1870, and was adopted in the State of Chihuahua in 1882.

What I have said with regard to registration after the Agrarian Law being passed not constituting a defect applies to plaintiffs' exhibit 21.

The description in Exhibit 19 is sufficient and absolutely according to the law of Mexico.

The only difference I found between the two Codes in regard to the essential elements and the validity of the contract is that in the old Code they did not establish the formality, any formality for the validity of the con-

tract, and that contract specified no formality is necessary. In Article 1395, in order that a contract shall be valid, it shall fulfil the following conditions: First, capacity of the contracting parties; second, mutual consent, and, third, the object of the contract must be legal. The New Code establishes four, they add that the contract shall be executed with external formalities established by the law. This difference is complete in reading Article 1439 of the old Code. That establishes the validity of the contract does not depend upon any formality, with exception of those cases in which the law expressly establishes any formality. The general rule is they do not need any formality, and the exception in the law establishes the case in which formality is necessary.

ON RECROSS EXAMINATION:

I base my conclusion that that was a valid and effective instrument on two propositions, that the Agrarian Law of the State of Chihuahua was unconstitutional, in regard to the registration; and that the purpose of the registration was only effective in safeguarding the rights of third parties. Between the parties to the contract it would be valid, regardless of defective registration, but in order to affect the rights of third parties it must comply with the registration law. The object of the registration is to affect constructive notice to all third parties of the legal condition of the land.

The effect of a defective registration or failure to register would be confined to someone dealing with the original party, with the owner. That is the purpose of the registration to avoid the owner selling the property two or three times. The non-registration of a deed cannot make any harm to a third person. I think the failure to register a deed could not work any harm to any third person. The failure to register an instrument in accord-

ance with the requirements of the law renders that registration ineffective as far as the world is concerned, whatever the validity the instrument has.

I have said that this deed, in my opinion, was a valid deed to convey title under the laws of Mexico.

I stated there were four elements that were essential to the validity of a contract according to the New Code, and three according to the old Code. It is essential that the instrument shall show the parties had the capacity to contract, and to show this it depends on the place where the instrument has been executed, and the article which I read was it shall have been entered into with the external formalities of the place where it is executed. If a man is less than twenty-one years old he has no legal capacity to execute a deed in Mexico. If a deed was executed in El Paso, or Los Angeles, California, by one not twenty-one, but executed with strict formalities, that deed would not convey title in Mexico, because there are personal statutes. The capacity is ruled by the law of his nationality, of his country. A man in Mexico who is not old enough to execute a valid deed in Mexico may not come across the river in El Paso and execute a deed to land in Mexico. If a man has not capacity to execute it then it is invalid to a deed to land in Mexico, although it would have been valid in California. This is the personal statute. If you execute a valid deed in Mexico it is valid until any person attacks and proves their incapacity. It is convenient to the validity of a deed in Mexico that the deed shall show that the parties had the legal capacity to contract, but it is not necessary.

It is an essential requirement of a deed in Mexico that it shall show mutual consent of the parties. It is necessary to show mutual consent, but this mutual consent shall be shown according to the law of the place in which the deed has been executed.

Q Will you find in that instrument the evidence by which it shows mutual consent under the laws of the United States, California, Mexico, or anywhere else?

A Yes, in a deed in the United States, in Texas especially, transfers dominion for $10.00 and other considerations. I sell this for $10.00 and other considerations, and in this case the consent is implied.

This is the way the law establishes consent here. The instrument says in virtue of $10.00 they received, and another consideration of the sale, and other articles of the Civil Code the conditions that shall be essential to a contract shall be implied. I sell,—that implies there the sale, meeting of the minds between the seller and the buyer. From the moment it is a sale there are a seller and a buyer. For $10.00 I sold, and the other bought. That is mutual consent in the case.

If the deed is executed according to the law of Texas, and according to the law of Texas the form establishes the deed will transfer dominion of the property this deed is good in Mexico, is legal in Mexico. If it does not show mutual consent under the laws of Texas then in my opinion it does not fulfil; it is required also by Mexican law. Mutual consent must be in accordance with the law of Texas.

(Witness excused).

Plaintiffs offered in evidence their exhibit No. 22, being a copy of the will of Charles H. Peck, same being marked "P-22", and being in words and figures as follows:

P. 22

I, Charles H. Peck, of the City of St. Louis State of

Missouri, do make ordain and publish this my last will, hereby revoking all former Wills by me made.

FIRST: I hereby devise and bequeath to my beloved wife Rebecca, during her life with power absolutely to dispose of same if she so desires, all my horses, carriages, and other vehicles household furniture, plate ware, pictures, Books, and other articles of personal property belonging to me and used as a part of the equipment of my resident and its apertenances at No. 7, Vandeventer Place, St. Louis Missouri, and that said property be not inventoried or involved in the administration of my estate, and if my Daughter Rebecca (wife of J. W. Dusenberg Jr.) and my Daughter Belle Peck, either one or both of them survive their mother, and their mother has not disposed of the personal property and articles named above, then I hereby devise and bequeath to my said Daughters or the survivor them, all the said personal property or so much thereof as my said wife Rebecca may not have disposed of, to make such disposition of same as they may think proper.

SECOND: I hereby devise and bequeath to my beloved wife Rebecca, for and during her life, and the remainder to my Daughters, Rebecca and Belle, or the survivor of them during their lives, my residence property No. 7 Vandeventer Place St. Louis Missouri Fronting two hundred. feet more or less on the north side of Vandeventer Place extending *noth*wardly one hundred and forty five feet more or less to Bell Avenue, Bounded north by Bell Avenue, East by Grand Avenue, South by Vandeventer Place and West by Tutt, and my said wife Rebecca is hereby authorized and empowered at any time during her life, and my said daughters Rebecca, and Belle, or the survivor of them, after the death of their mother are in like manner hereby authorized and empowered, to sell, or if

they so desire to lease all, or part of said property for a term of ninety nine years, or less, both the life estate and the estate in remainder at such price and upon such terms as my said wife Rebecca, or my said Daughters Rebecca, and Belle, or the survivor of them may see fit, and said trustees shall on request in writing of my said wife Rebecca, or after her death upon the request in writing of my said Daughters, Rebecca and Belle, or the survivor of them join in the conveyance of the real estate in remainder whether it be a sale, or lease, and the proceed in the event of a sale in whole or in part, as my wife Rebecca may direct, or after her death, as my said Daughters Rebecca and Bell, or the survivor of them may direct, shall reinvest in such resident real estate, or other property as my said wife Rebecca *may* select or after her death as my said Daughters Rebecca and Belle, or the survivor of them may select, to be unincumbered real estate in the City of St. Louis, Missouri, preference being given to improved property, and my said wife Rebecca, or after her death as the case may be, my said daughters *Rebecca* and Belle or the survivor of them shall take an estate *f*uring the life of my said wife, or after her death during the life of my said Daughters Rebecca and Belle or the survivor of them, in all the real estate so purchased from the proceed of any sale made, or if leased all the rents and issues arising therefrom, and said Trustees shall take the estate in remainder of all said real estate so purchased from the proceeds of sales, as a part of the General Trust estate—said Trustees are hereby directed to pay out of the income of the trust estate all General and Special Taxes insurance and repairs, during the life of my said wife Rebecca, and during the life of my said Daughters Rebecca and Belle or the survivor of them and all the real estate herein devised to them & also on all the property purchased by

proceeds of sales of said real estate, and such taxes, insurance repairs & shall not in any wise be a charge against my said wife or against my said Daughters, or the survivor of them.

THRID: I hereby devise and bequeath to Agness E. Peck, Widow of my deceased son Austin Peck and to my Granddaughters Rebie A. Peck and Lilly B. Peck (Children of my deceased son Austin Peck) jointly, during the widowhood of said Agness E. Peck, as the widow of my deceased son Austin Peck, The Farm con*tia*ning One hundred acres, more or less with the improvements thereon, where my deceased son Austin Peck lived, situated at the Junction of Page or Cook and Elmwood Avenues, in Central township St. Louis Missouri, and being the same property acquired by me of Lewis O. Martin by deed dated December 31st 1871, and recorded in the Recorders office of St. Louis, & formerly St. Louis County Missouri in Book 515, page 162, and the remainder to Austin Peck, Jr., B. Franklin Peck, Roderick A. Peck, Robert S. Peck, Rebie A. Peck, and Lilley B. Peck, Children of my deceased son Austin Peck, to be divided into shares as follows

To Rebie A. Peck, and Lilley B. Peck, jointly, the House and out buildings on said Farm and acres of the land of said Farm to be selected by said Rebie A. Peck and Lilley B. Peck or the survivor of them, and the balance of said Farm or land to be equally divided between Austin Peck, Jr. B. Franklin Peck, Roderick A. Peck and Robert S. Peck, having herein devised and bequeathed the above Farm to the Children of my deceased son Austin Peck they are not to have any other interest in my estate except as hereinafter provided.

FOURTH: I hereby devise and bequeath all the residue and remainder of property real and personal and mixed

including the estate in remainder of the real estate herein devised to my wife, Rebecca, and to my daughters Rebecca and Belle during their lives (but the personal property herein devised in Clause One, to my wife Rebecca and to my daughters Rebecca and Belle is not included) and whereever situated to Charles H. Peck Jr., Stephen Peck, John A. Peck, Rebecca, (wife of J. W. Dusenberg Jr. and Belle Peck, and to the survivor of them, and their successors, and to the heirs of such successors and successor for ever, *In Trust however,* for the following purposes, said Trustees shall take immediate possession and control of all of said property herein devised and bequeathed to them in trust, and collect and receive all the rents issues and income thereof, I hereby give to said trustees and their successors in the trust, full power subject to the exceptions and limitations hereinafter named, to manage rent, lease, sell and dispose of both the property belonging to my estate at the time of my death and herein devised and bequeathed to them in trust, and also that afterwards acquired by them on reinvestment of any of the trust funds of the trust estate, and hereby direct and give them full power to invest, and reinvest the proceeds of any sale, and every sale in real estate only, except as hereinafter mentioned—Whenever in this will the words "said trustees" are used they are meant to to and *to* include not only the trustees herein but also all the successors in the trust under this will. Said trustees shall have no power to sell for re-investment, any improved real estate situated St. Louis Missouri belonging to my estate at the time of my death which lies within the following limits to wit, Bounded on the North by Carr Street, East by Second Street, South by Poplar Street and West by Grand Avenue, nor the property situated on the Northeast corner of the Natural Bridge Road and Thompson Street, having a front of One Hundred and

twenty-feet on the north line of said Natural Bridge Road, and estend northwardly one hundred and forty seven and one half feet more or less to an alley, nor the property having a front of fifty four feet and six inches on the south side of Windsor Place and extending southwardly the same width, One hundred and forth seven feet to Bell Avenue and being directly opposite where Spring Avenue intersects Bell avenue, except upon unanimous consent of the trustees, and the consent of three fourths of all my descendants then living over the age of twenty years and receiving income under this will, in writing (except those having only fixed amounts to paid to them as provided in clause 16, nor shall said trustees have any power to sell the estate in remainder of any real estate during her life, or the life of my said daughters, in which my said wife Rebecca, or my said Daughters Rebecca and Belle have an estate for their lives, unless my said wife, Rebecca or after her death my said daughters Rebecca and Belle, or the survivor of them request said trustees in writing to do so. Said Trusteès shall have no powere to mortgage or pledge any real estate or personal property held by them under this will.

FIFTH: In all cases where real estate is to be purchased by said trustees as a reinvestment of trust funds, they shall select good rentable real estate in the City of St. Louis or if upon unanimous consent of all the trustees they decide that it would be to the interest of the estate, to invest part of the trust funds in good rentable business property, outside of the City of St. Louis Missouri they may do so, but so far as I can now Judge I believe it best to confine all reinvestments in said City of St. Louis, all reinvestments must be in unincumbered real estate, but if incumbered, they must be assured that they will have the money at their command to pay said incumbrance when

due, provided it cannot be paid at once, and in each case the title shall be a fee simple, and the deed conveying said property to them shall on its face express that it is conveyed to them and their successors and heirs, in fee, "as trustees of the estate of Charles H. Peck" in accordance with his will recorded in Book page of the probate or recorders office in the City of St. Louis, Missouri, and such reinvestment of trust funds shall be made as promptly as practicable after the sale of trust property, out of which said funds *arrise.*

SIXTH: All the notes stocks Bonds and other securities, if any *kind* owned by me at the time of my death shall be by said trustees, collected, or sold and converted into cash with two year next after my death, or if delayed by law, or the other good and reasonable cause, then as soon after the expiration of two year as practicable, or is said Trustees are unanimously in the opinion that additional time should be taken to dispose of same they may delay said sale but not longer than three years and *promply,* as practicable reinvest the money in real estate, or in improving real estate belonging to the trust estate.

SEVENTH: Five per cent of all the net income of the trust estate shall be set *asside* and held by said trustees as a fund to be used by them in making such imporvements (not repairs) as they think *propper* on real estate belonging to the trust estate, and they are hereby given full power to make such improvements, and such part of such fund as shall not be used by them, shall be invested in Loans secured on good improved real estate in St. Louis Missouri of double the value of the loan, secured by first deed of trust, the notes evidencing said loan to be payable or assigned to said trustees by name as "Trustees" of Charles H. Peck's estate, and said trustees may convert said notes into cash whenever, as far as needed

to pay for such improvements, and reinvestments mentioned in this clause, or said trustees may if they see fit invest all or any part of said improvement fund in good improved unincumbered real estate in the City of St. Louis Missouri, and resell the same at any it may be required to raise fund for investments, as aforesaid, if upon any reinvestment of the proceeds of sale any of the trust property, there shall be left a balance of Two thousand dollars, or less, such unexpended balance shall be added to and become a part of said improvement fund, and upon any reinvestment to be made, of such proceeds there shall be a deficiance of five thousand, or less the amount required to purchase the property desired for reinvestment said deficiancy shall be taken from said improvement fund and applied to such purchase.

EIGHTH: Said Trustees shall always keep on hand in cash from the income of the trust estate, a special fund not exceeding one thousand dollars, to *met* contingencies, in the preservation of the property of said trust estate, and out of the same to expend to the extent of fifty dollars per year, if that amount is required in keeping the Burial lot numbered 683 in Bellfontain Cemetery belonging to me, in good order and condition.

NINTH: Said Trustees shall keep all building and structures belonging to the trust estate in proper repair, and properly insured, and promptly pay all general and special taxes at any time legally levied on said trust estate.

TENTH: All money belonging to the trust estate shall be deposited in a strong Bank, or Trust Company in St. Louis Missouri to be selected by said trustees, and in the name of said trustees as the "Trustees" of Charles H. Peck's estate, and all payments made by them in sums exceeding Twenty five dollars shall be by check payable to

the order of the person, or party, entitled to receive payment from said trustees, and a receipt taken for same, and all payments of twenty five dollars and under, which may not be paid by check, a proper receipt shall be taken signed by the person entitled to payment. All notes, stocks, Bonds and other securities belonging to the trust estate, shall be kept and deposited by said trustees, in a Box in some good, safe deposit Company in St. Louis Missouri, rented exclusively for the use of the trust estate, the deposit bearing the notice, and being in the name of said trustees as the trustees of Charles H. Peck's Estate.

ELEVENTH: In all cases where said trustees are by this will, empowered or required to do anything, the majority of them, except where otherwise specified shall govern, and the act of such majority shall be valid, but no sale, or investment, or reinvestment of any *othe* trust property shall be made, nor payment *agregating* over One thousand dollars be made, unless there are three acting trustees in office.

TWELFTH: Whenever any of said trustees shall remove and reside from the City or County of St. Louis Missouri and by so doing the number of resident trustees is reduced to three, the remaining or resident trustees shall without unnecessary delay notify said nonresident to return to St. Louis within sixty days from the date of said notice, failing to do so, said non-resident trustees shall cease to be trustees, and whenever any vacancies shall occur in the office of trustee from the foregoing or any other cause to reduce the resident to three is number, as aforesaid the remaining trustees shall within sixty days, after any such vacancy may occur appoint to such vacancy or vacancies, such person, or persons, as they shall agree to be trustee, or trustees, and such appointment shall be

in writing duly signed and acknowledged by them, and be at *one* recorded in the office of the recorder of deeds of the City of St. Louis Missouri. If the three remaining trustees do not agree within sixty days upon the person, or persons to fill said vacancy or vacancies, or if there be but two trustees remaining in office, then and in either case the Circuit Court of the City of St. Louis Mo. upon the application of the remaining trustees in office, or if they fail or neglect to make such application within said sixty days, then any beneficiary under this Will, (except those having fixed amounts only to be paid them as provided in Clause 15.) After due and timely notice to the other beneficiaries as aforesaid, living over the age of eighteen years and to the guardian if any there, be of such as may that age of the time and place of Application, shall appoint a person, or persons, as trustees to fill each existing vacancy.

THIRTEENTH: Said trustees as full compensation for all their services, of all kinds under *an* relation to this will, shall in the aggregate, and be equally divided between them, unless otherwise divided by consent of each of them be allowed and receive from the trust estate five per cent on all money collected and received by them except upon the sale of property for reinvestment, on such sales they shall receive in the aggregate two and one half, percent of the purchase money of the property sold, they shall receive nothing from any disbursements on any account whatever. If the persons named as trustees in this will, or their successors in office, attend to the renting and collecting the rents of the property belonging to the trust estate they shall be entitled to receive the usual commissions or per centage, allowed, or paid generally to real estate agents in the City of St. Louis Mo. for such services this to be in addition to the five per cent provided to be paid to them above in this Clause.

FOURTEENTH: All debts that may be owing to me at the time of my death from any of my Children or other descendants, are hereby released, and discharged, all payments of money, or conveyances, or assignments of property, I have heretofore made or shall hereafter, and prior to my death make, to any of my children, or other descendants, are and shall in each case, as gifts, and not as advancements and shall not be charged against them in any way, or to any extent.

FIFTEENTH: The said trustees shall pay to *ny* Wife Rebecca, during her life the sum of eight hundred dollars per month payable on the fifteenth day of each month. Said trustees shall pay to my Daughter Rebecca (wife of J. W. Dusenbery Jr.) during her life the sum of Two hundred per month, payable on the fifteenth day of each month. Said trus*y*ees shall pay to my daughter Belle during her life the sum of Two Hundred & fifty dollars per month payable on the fifteenth day of each month. If Allice Peck the present wife of my son John A. Peck survives him said trustee shall pay to her during widowhood as his widow the sum of Sixty dollars per month payable on the 20th day of each month. If Mary T. Peck, widow of my deceased son shall pay to her during widowhood, as the widow of my deceased son Roderick A, Peck the sum of Forty dollars per month payable on the 20th day of each month, the payments *ablve* mentioned to be paid to Mary T. Peck, and Allice Peck as widows of my sons above mentioned shall in each case be charged against and taken from the share of income payable in the a*g*gergate to the children of such widow being my descendants, and the share of her children my descendants shall be *lessoned prerata* to the extent of such payment to their brother for such of the time during *during* the period each of said widows is to receive

payment, as aforesaid, if she shall have no child my descendent living the payment above mentioned to be made to her shall be taken from the share of income that would have been paid to her husband my descendant, if he were living, the remaining part of said share to be a part of the net income fund of said trust estate, and to be paid and distributed as herein in other clauses provided. Said trustees shall pay to Agnees E. Peck, widow of my deceased son Austin Peck, during her widowhood, as his widow the sum of twenty dollars per month payable on the 20th day of each month, Said trustees shall pay to Rebie A. Peck. and Lilley B. Peck children of my deceased son Austin Peck to each during their lives the sum of Thirty dollars per month payable on the 20th day of each month. Said Trustees shall pay to Mary Powers a faithful servant in my family during her life the sum of Twenty dollars per month on the 20th day of each month which shall be accepted by her as being in full demands against my estate. Said trustees shall pay when convenient by within fifteen months next after my death Five hundred dollars to each of my grandsons Austin Peck, Franklin B. Peck, Roderick A. Peck and Robert S. Peck, Children of my deceased son Austin Peck this is in addition to the provision made it to them in clause third.

SIXTEENTH: For and during the life of the last surviving one of my descendants that may be living at the time of my death, and for and during fifteen years next after the death of said survivor the said Trustees shall pay all the remaining net income of the trust estate not hereinbefore disposed of (or that may be Codicil to this Will hereafter disposed of) in equal annual quarterly payments, on the fifteenth day of January, April, July, and October

of each year as follows. To Wit; to my son Charles H. Peck, Jr. during his life three eighteenth share of said income.

To my son Stephen Peck during his life three eighteenth share of said income.

To my son John A. Peck, during his life three eighteenths share of said income.

To my Daughter Rebecca, wife of J. W. Dusenbery Jr. during her life three eighteenths share of said income. To my Daughter Belle Peck during her life three and one half shares of said income.

To Lidda, and Mamie Peck, daughters of my deceased son Rudolph Peck, to each during their lives one and one half thrity sixth share of said income.

To William L. Peck, son of my deceased son William W. Peck during his life one and one half eighteenths share of said income, said share to be paid to Stephen Peck, in trust, and *by him* from time to time as he may think proper to said Wm. L. Peck until he arrives at the age of twenty *one* years, and thereafter said share to be paid directly to said William L. Peck.

If the above named descendants, should die prior to my death, leaving descendants living at the time of my death, such last mentioned descendants shall receive *er* stirpes and in equal parts, the share their deceased parent would have taken if then living, and said trustees shall pay such share accordingly.

Whenever after my death and prior to the expiration of said fifteen years next after the death of the last surviving one of my descendants living at the time of my death, any one of my descendants shall die leaving descendants living last mentioned descendants shall receive per stirpes

and in equal parts the share their deceased parent would have received if then living, and said trustees shall pay such share accordingly. The Words "descendants", whenever used in this will, means lawful descendants, and means descendants where there is but one. The payment of income to be made under this sixteenth clause of my will to my descendants, and under any will of any of my descendants having the power of appointment as *hereifafter* authorized, are in each individual case be made only during the life of such descendant who may die prior to the expiration of said fifteen years, and in the case of my descendants who may be living at the expiration of said fifteen years the payments to be made to them in each individual case, until the expiration of said fifteen years and then cease.

The share that my descendants would receive under this sixteenth clause is subject to be dismissed by the provisions of 15 clause and to increase or deminished by the following provisions.

I hereby authorize and empower any of my descendants to whom the right has accrued under any provision (this included) in this 16th clause of my will, any share of said income, to designate and appoint, by his or her duly executed will, the person or persons, among my descendants, only and whether or not their parent descended from me, be living to take and receive such share of said income after the death of said descendant, theretofore receiving such share making said appointment by will, such designation and appointment by such will, may be of, and to one or more of my descendants, and for not exceeding the period above limited, and if to more than one descendant, then of what of said share each is to receive, and to the person or persons among my descendants designated and appointed as aforesaid by the will of the deceased descendant to whom it was formerly paid. Should

any of my descendants die before or after my death, leaving no descendants, or Brother or Sister descendant *fromè* me, and having made no appointment by will as above provided, of the persons to whom to his or her share should after his or her death be paid, then such share of income under this 16th Clause of my will, shall be *be* paid to the other descendants then living and entitled to receive shares of income under this 16th Clause of my will, and in the same proportion in which they are receiving shares of income.

In every case of any payment of income to be made under this 16th clause of my will to any female, such payment shall be to her for her sole and separate use, and free from the control and debts of her husband, if any she have.

SEVENTEENTH: In no case shall any of my Children, or other descendants of the persons in the 16th Clause of this my will, who may be entitled to receive payment, as aforesaid during their respective *livesor* until the expiration of said fifteen years, or during their widowhood, have *have* the right or power, of either volu*m*tary or involuntary, by way of anticipation, or otherwise conveying, assigning; or in any other way disposing of, or in any way incumbering, or creating any lien, upon *my* of said payments, or any part thereof, or on, or of the right to receive the same or any part thereof before the payment is in part made and completed from said trustees to my child, or other descendants, or persons named in said 16th clause, who is to receive such payment under this my will, or the will of any of my descendants, as above provided. My purpose being to secure to each of said beneficiaries, being my children and other descendants, and persons named in said 16th clause for the period above mentioned in their respective cases, an income beyond the accident

of fortune, or imprudence, on *there* part, and beyond their power to anticipate any payments thereof, and no part of which income shall be in any way liable, or taken for the debts now existing or hereafter created of any of said beneficiaries, until it shall have been actually paid over and received by such beneficiary.

EIGHTEENTH: Immediately upon the expiration of said fifteen years next after the death of the last surviving one of my descendants living at the time of my death, all the trust created by this will shall cease and said trustees then in office shall immediately convey, assign and deliver all the property belonging to the trust estate, and to my estate to the persons designated as follows. All my descendants then living and of whatever descent from me, and whether or not their parent descendant from me be living shall be treated as one class, and on an equality with each other and shall receive per capita and in fee simple absolutely to each of my descendants then living his or her equal share of all of said property, and in every case where such descendant is a female her share of said property shall be for her sole and separate use and free from the control or the estate by the courtecy of any husband she *she* may then have, or ever have, and it shall be so expressed in the conveyance and assignment from said trustees to her of her said share of said property.

If any beneficiary under this will shall at any time begin legal proceedings to contest this will or any part there of, then said beneficiary shall not thereafter be entitled or receive anything under this will, and thereafter the share such beneficiary otherwise would have received shall go to my other beneficiaries and descendants as provided in this will.

TWENTIETH: Since writing the foregoing pages of my Will, I have devided to make, and do hereby make

the following changes To Wit. Whereas I own about Eleven thousand acres of land in Dunklin County Missouri, as will appear by referring to the deed from Charles H. Peck Jr. and Stephen Peck to me, dated and recorded in Book 21 for recording deeds, page 551, for Dunklin County Missouri. I also own 24/81 undivided interest (A. L. Shapleigh and Thos. Ranken Jr., owing the balance, of a tract of land containing 95204 Acres known as the La Santisima Grant in Old Mexico, as will appear by referring to the deed from Bennett H. Davis late of El Paso Texas, dated Feb. 13, 1897. Said land situated about 45 miles below El Paso Texas and extends about 30 miles along the Rio Grande River. I also own 151/1250 shares of the Capital Stock of the Rio Bravo Land and Cattle Company, and 15/1250 interest in a tract of land in Old Mexico containing about 105000 acres conveyed to me, A. L. Shapleigh, Thos. R Ranken Jr. John O'Fallon & others by Bennett H. Davis by deed dated Feb. 13, 1897, said land is also bordering on the Rio Grande River. I hereby authorize, empower, and direct said Trustees, to use their best judgment as to the time, and terms to sell the above land, and after paying Taxes & other expenses paid by them on account of said land and two and one half percent commission for their services they shall pay the balance from time to time as sales are made in shares as follows,.

To Wit:

To the children of my deceased son Austin Peck one fourteenth share, To be equally divided between them. To the children of my deceased son Rudolph Peck, one fourteenth share to be equally divided between them. To the Children of my deceased son Roderick A. Peck, one fourteenth share to be equally divided between them to Wm. I Peck son of my deceased son William W. Peck one fourteenth share, To my sons Chas. H. Peck, Jr. Stephen

Peck, and John A. Peck and my Daughters Rebecca (wife of J. W. Dusenbery) and Belle Peck, to each one seventh share making the whole net proceeds from the sale of said lands, the share of Wm. I. Peck to be paid to his Uncle Stephen Peck and held by him as provided in clause sixteen for the payment of shares of income of the trust estate, the proceeds from the sale of said lands to be held by said trustees subject to the same conditions restrictions & Liabilities as provided in clause seventeen of this my will for the payment of income *form* the trust estate, and where as in clause Sixth that "all notes and Bonds and stocks and other securities shall be converted into case within two years next after my death". I hereby authorize and give said trustees discretionary power to sell, or retain the stocks I may own for a longer time if they unanimously decide it to be for the interest of the Trust estate to do so.

I give and bequeath to my son Stephen Peck, my Gold repeating watch and my Diamond Stud.

I hereby nominate and appoint my wife Rebecca A. Peck, and my sons Charles H. Peck Jr. Stephen Peck and John A. Peck, or any three of them, to be Executrix, and executors of this my last will, and request that they be not required to give bond as such executrix and executor, but if required to give bond said trustees shall pay the expense or premium required to obtain such bond.

In testimony whereof I the said Chas. H. Peck having to this my last will contained and *writen* upon one side of twenty two sheets of paper, and all in my own hand writing and every page thereof subscribed my name and to this last page thereof I have subscribed my name and affixed my seal this 15th day of July 1897.

CHAS. H. PECK

Signed sealed, published and declared by the said Chas.

H. Peck as and for his last will in the presence of us, who at his request and in his presence, and in the presence of each other have subscribed our names as witnesses hereto this 15th day of July 1897.

JOHN CLEMENTS JR.
JULES DESLEGÉ
WM. H. THOMSON

Plaintiffs offered in evidence decree of the Circuit Court, St. Louis, Missouri, probating the will and appointing trustees.

The document was marked "P-23", and is in words and figures as follows:

P. 23

STATE OF MISSOURI)
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

DECEMBER TERM, 1902
Tuesday, December 30th, 1902

Stephen Peck, John A. Peck, Rebecca)
Dusenbery and Belle Peck Bryant.)
v 22539-A)
Rebecca A. Peck, J. W. Dusenbery, Jr.,)
Charles H. Peck, Pearl B. Desnoyers, Willis)
L. Desnoyers, Willis Desnoyers, a minor,)
Charles H. Desnoyers, a minor, Dorothea)
Desnoyers, a minor, Lidda Peck Green, Otis)
H. Greene, Mamie Peck Butcher, Thomas W.)
Butcher, Mabel Peck Filmore, Walter Fil-)
more, Marion Peck, a minor, William J.)
Peck, Ethel Catlin Peck, Mary P. Peck,)

Agnes E. Peck, Rebie A. Peck, Lilly B. Peck,)
Austin Peck, Benjamin Franklin Peck, Rod-)
erick A. Peck, Robert S. Peck, Nellie Filling-)
ham Peck, Austin Peck, Jr., a minor, Rod-)
erick Peck, a minor, Emma T. Peck, Gene-)
vieve Peck, a minor, Charles Gordon Peck,)
a minor, Ida B. Peck, Bernard Wesley Peck,)
a minor, Alice Peck and Max M. Bryant.)

Now at this day come the plaintiffs by S. T. G. Smith and Thos. S. Meng their attorneys; come also defendants Charles N. Peck, Pearl B. Desnoyers, Willie L. Desnoyers, Mabel Peck Filmore, Mamie Peck Butcher, and Lidda Peck Greene, by Klein & Hough, their attorneys; come also defendants Willie Desnoyers, a minor, Charles H. Desnoyers, a minor, Dorothea Desnoyers, a minor, and Marion Peck, a minor, by Willis L. Desnoyers, Guardian ad litem for said four minor defendants, and by Klien and Hough attorneys for said guardian ad litem; come also defendants Austin Peck Jr., a minor and Roderick Peck, a minor, by Austin Peck, their Guardian ad Litem; come also defendants Genevieve Peck, a minor, and Charles Gordon Peck, a minor, By Benjamin Franklin Peck, their Guardian ad Litem; comes also defendants Bernard Wesley Peck, a minor by Roderick A. Peck, his Guardian ad Litem; come also defendants Austin Peck and Nellie Fillingham Peck, by W. R. Gentry, their attorney.

And on motion of Plaintiffs, it being shown to the Court that Belle Peck, a female plaintiff, has been married to Max M. Bryant since the institution of this suit, plaintiffs by leave of Court amend their petition by interlineation, alleging the fact of the marriage of said female plaintiff, and changing the name of said party plaintiff from Belle Peck, to Belle Peck Bryant, and making the said Max M. Bryant, husband of said plaintiff, party

defendant herein; and the said Max M. Bryant waives the issuance of summons and enters his voluntary appearance in this cause; and plaintiffs further, by leave of Court, insert the name of defendant Alice Peck in the caption of their petition, the same having been unintentionally omitted in said caption. And it appearing to the Court that defendants Rebecca A. Peck, Alice Peck, J. W. Dusenbery, Jr., Pearl B. Desnoyers, Willis L. Desnoyers, Willis Desnoyeds, a minor, Charles H. Desnoyers, a minor, Dorothea Desnoyers, a minor, Agnes E. Peck, Rebie A. Peck, Lilly B. Peck, Austin Peck, Benjamin Franklin Peck, Roderick A. Peck, Robert S. Peck, Nellie Fillingham Peck, Austin Peck, Jr.; a minor, Roderick Peck, a minor, Emma T. Peck, Genevieve Peck, a minor, Charles Gordon Peck, a minor, Ida B. Peck, and Bernard Wesley Peck, a minor, have each been duly and personally served with a summons in this State according to law.

And it appearing that defendants Charles H. Peck, Lidda Peck Greene, Otis H. Greene, Mamie Peck Butcher, Thomas W. Butcher, Mabel Peck Filmore, Walter Filmore, Marion Peck, a minor, Mary T. Peck, William J. Peck and Ethel Catlin Peck are non residents of the State of Missouri, and that the ordinary process of law cannot be served on any of said defendants, and it appearing that each and all of said non resident defendants have been duly summoned in this cause by publication of notice according to law; and it appearing that defendants William J. Peck and Ethel Catlin Peck have filed a written entry of appearance in this cause and it appearing that the Court has heretofore appointed Willis L. Desnoyers, guardian ad litem for Willis Desnoyers, Charles H. Desnoyers and Dorothea Desnoyers infant defendants under the age of 14 years and for Marion Peck infant defendant under the age of 14 years and that the said Willis *S.* Desnoyers has filed answer for and on

behalf of said four infant defendants and it appearing that the Court has heretofore appointed Austin Peck, Guardian ad litem for Austin Peck, Jr., an infant defendant of the age of 7 years and for Roderick Peck an infant defendant of the age of 4 years, and that the said Austin Peck has filed answer for and on behalf of said two infant defendants and it appearing that the Court has heretofore appointed Benjamin Franklin Peck, Guardian ad litem for Charles Gordon Peck an infant defendant of the age of 11 years and for Genevieve Peck, an infant defendant of the age of 5 years and that the said Benjamin Franklin Peck has filed answer for and on behalf of said two infant defendants, and it appearing that the Court has heretofore appointed Roderick A. Peck, Guardian ad litem for Bernard Wesley Peck an infant defendant of the age of 4 years and that the said Roderick A. Peck has filed answer for and on behalf of said infant defendant, and it appearing that the Court has jurisdiction of all the parties to this proceeding and it appearing that defendants, Rebecca A. Peck, J. W. Dusenbery Jr., Alice Peck, Odis H. Greene, Thomas W. Butcher, Walter Filmore, William J. Peck, Ethel Catlin Peck, Mary T. Peck, Agnes E. Peck, Rebie A. Peck, Lillie B. Peck, Benjamin Franklin Peck, Roderick A. Peck, Robert S. Peck, Emma T. Peck, Ida B. Peck, and Max M. Bryant have not filed answer herein, but have made default. And this cause coming on to be heard upon the petition of plaintiffs, the answers of defendants Willis L. Desnoyers, Pearl B. Desnoyers, Charles H. Peck, Mabel Peck Filmore, Mamie Peck Butcher and Lyda Peck Greene, the answer of Willis Desnoyers, Charles H. Desnoyers, Dorethea Desnoyers and Marion Peck, infant defendant by the guardian ad litem, the answer of Austin Peck Jr., and Roderick Peck infant defendants by their guardian ad litem, the answer

of Charles Gordon Peck and Genevieve Peck, infant defendants by their guardian ad litem the answer of Bernard Wesley Peck infant defendant by his guardian ad litem; the answer of defendants Austin Peck and Nellie Fillingham Peck and this cause being submitted to the Court upon the evidence and the exhibits files and proofs adduced and the Court being now after due consideration fully advised in the premises doth find as follows: That Charles H. Peck being a resident of the City of St. Louis, Missouri, departed this life on the 3rd day of July 1899 leaving a last will and testament whereby after making certain devises and bequests he devised and bequesthed to plaintiffs herein, Stephen Peck, John A. Peck & Dusenbery and Belle Peck Bryant all the rest and residue of his preperty real and personal and mixed on certain trusts in said will fully set forth, that said will was duly probated in the Probate Court of the City of St. Louis, Missouri, on July the 10th day, 1899 and that plaintiffs Stephen Peck and John A. Peck duly qualified as executors under said will and are now acting as such that plaintiff Belle Peck Bryant is the daughter of said testator Charles H. Peck, and has married since the institution of this suit and is the person *refered* to in said will as Belle Peck and that defendant Max M. Bryant is the husband of plaintiff Belle Peck Bryant, that plaintiffs Stephen Peck, John A. Peck, Rebecca Dusenbery and Belle Peck Bryant all the only persons named and appointed as trustees in the fourth clause of said will of Charles H. Peck, who were surviving at the death of the said testator and that Charles H. Peck Jr. named therein as trustee predeceased said testator and that plaintiffs are now acting as trustees under the various clauses and provisions of said will, that defendant Rebecca A. Peck is the widow of said testator Charles H. Peck, and is the person mentioned in said will as the wife of the testator that defend-

ant J. W. Dusenbery Jr., is the husband of plaintiff Rebecca Dusenbery, that defendant Alice Peck is the wife of plaintiff John A. Peck, that defendant Charles H. Peck and Pearl B. Desnoyers are the Children of the said testator, deceased son Charles H. Peck Jr., that defendant Willis L. Desnoyers is the husband of Pearl B. Desnoyers, that defendants Willis Desnoyers, Charles H. Desnoyers and Dorethea Desnoyers are the children of defendants Willis L. Desnoyers and Pearl B. Disnoyers and are minors, that defendants Lida Peck Greene is the daughter of said testators deceased son Rudolph Peck and is the person *refered* to in said will as Lida Peck, that defendant Otis H. Greene is the husband of defendant Lida Peck Greene; that defendant Mamie Peck Butcher is the daughter of said testators deceased son Rudolph Peck, and is the person *refered* to in said will as Mamie Peck that defendant Thomas W. Butcher is the husband of defendant Mamie Peck Butcher, that defendant Marion Peck is a daughter of the said testators deceased son Roderick A. Peck and is a minor, that defendant Mary T. Peck is the widow of said testators deceased son Roderick A. Peck, that defendant William J. Peck is the son of said testators deceased son William W. Peck that defendant Ethel Catlin Peck is the wife of defendant William J. Peck that defendant Agnes E. Peck is the widow of said testators deceased son Austin Peck, that defendants Rebie A. Peck, Lillie B. Peck, Austin Peck, Benjamin Franklin Peck, Roderick A. Peck, and Robert S. Peck are the children of said testators deceased son, Austin Peck, that defendant Nellie Fillingham Peck is the wife of defendant Austin Peck, that defendants Austin Peck, Jr., and Roderick Peck are the children of defendants Austin Peck and Nellie Fillingham Peck and are minors, that defendant Emma T. Peck, is the wife of defendant Benjamin Franklin Peck, that defendant Genevieve Peck and Charles Gordon Peck are

the children of defendants Benjamin Franklin Peck and Emma T. Peck and are minors; that defendant Ida B. Peck is the wife of defendant Roderick A. Peck; that defendant Bernard Wesley Peck is the son of defendants Roderick A. Peck and Ida B Peck and is a minor; that defendant Mabel Peck Filmore is the daughter of said testator's deceased son Roderick A. Peck and is the person *refered* to in said will as Mabel Peck; that defendant Walter Filmore is the husband of said defendant Mabel Peck Filmore, that all of the descendants of said testator Charles H. Peck who were living at the time of his death are made parties to this suit, and are as follows: Plaintiffs Stephen Peck, John A. Peck, Rebecca Dusenbery and Belle Peck Bryant and defendant Charles H. Peck, Pearl B. Desnoyers, Willis Desnoyers, Charles H. Desnoyers, Lidda Peck Greene, Mamie Peck Butcher, Mabel Peck Filmore, Marion Peck, William J. Peck, Rebie A. Peck, Lillie B. Peck, Austin Peck, Benjamin Franklin Peck, Roderick A. Peck, Robert S. Peck, Austin Peck Jr., Roderick Peck, Charles Gordon, Peck, Genevieve Peck, and Bernard Wesley Peck, that defendant Dorothea Desnoyers is the only descendant of said testator Charles H. Peck who has been born since the said testators death, that the property devised and bequeathed to plaintiffs as trustees under said will consists of personal property including notes, stocks, Bonds and choses in action, and also a large amount of real property, that portion of said personal property is now undergoing administration in the hands of the executors under said will; that the personal property bequeathed to plaintiffs as such trustees except such as remains in the hands of the executors is in the possession of plaintiffs in the City of St. Louis, Missouri, and consists of money, notes, stocks, bonds and choses in action that the real property devised to plaintiffs as such trustees is situated in the City of St. Louis,

Missouri, the County of St. Louis, Missouri and Dunklin County, Missouri, and is in the possession, charge, and control of Plaintiffs as such trustees, And the Court do thor further find, adjudge and decree, and doth construe the will of said testator Charles H. Peck and instruct plaintiffs' as trustees under said will as follows:

First: That by the Fourth clause of the will of said testator Charles H. Peck, plaintiffs as such trustees, and their successors in said trust, are authorized and empowered to make leases upon all, or any part or parcel, of the real estate so held by them in trust, under the provisions of said will, on which may hereafter be acquired and held by them thereunder, for terms of ninety nine years, or for terms of greator or less duration; and that under the provisions of said Fourth clause of said plaintiffs as such trustees', and their successors in said trust, are authorized and empowered to make leases for terms which may extend beyond the period limited for the duration of said trust estate and which shall be valid and binding for the full terms thereof, as against plaintiffs as such trustees and their successors, and as against the various beneficiaries of the trust estate, and as against the person or persons who may be entitled to receive any such property so leased at the expiration of the period limited for the duration of the trust estate, to-wit: At the expiration of the period of fifteen years after the death of the last surviving of the said testators descendants who were living at the time of his death, and the Court doth further find that the plaintiffs as such trustees have leased to Hortense Realty Company one parcel of the real estate devised to them under said will, the said parcel of real estate being situated at the northwest corner of twelfth street and Washington Avenue in the City of St. Louis, Missouri, and having a front of fifty feet on the north line of Washington Avenue, and extend-

ing northwardly through to Lucas Avenue; that the said lease is for a term of ninety-nine years from October the 1, 1901 and is recorded in book 1632 at page 8 in the Office of Recorder of Deeds of the City of St. Louis, Missouri, and the Court doth further find, adjudge and decree that plaintiffs as trustees under the will of said Charles H. Peck, were fully authorized and empowered to make said lease for the full term thereof, and that the said lease is valid and effectual in every respect as against plaintiffs as such trustees and their successors and as against all beneficiaries of the trust estate and as against the person or persons who may be entitled to receive said property so leased at the expiration of the period limited for the duration of the trust estate.

Second: The Court doth further find that the Fourth clause of the will of said Charles H. Peck contains the following provisions: "Said trustees shall have no power to sell for reinvestment any improved real estate situated, St. Louis, Missouri belonging to my estate at the time of my death which lies within the following limits to-wit: Bounded on the north by Carr Street, East by Second Street, South by Poplar Street and West by Grand Avenue, nor the property situated on the northeast corner of the Natural Bridge Road and Thompson Street, having a front of one hundred and twenty feet on the north line on said Natural Bridge Road and extent northwardly one hundred and forty seven and one half feet more or less to an alley, nor the property having a front of fifty four feet and six inches on the south side of Windsor Place and extending southwardly the same width one hundred and forty seven feet to Bell Avenue and being directly opposite where Spring Avenue intersects Bell Avenue except upon unamious consent of the trustees and the consent of three fourths of all my descendants

then living over the age of twenty years and receiving income under this will in writing (except those having only fixed amounts to paid to them as provides in clause 16"): And the Court doth further find that in using the words except those having only fixed amounts to paid to them as provided in clause 16 the words clause 16" were used by mistake and that it was the intention of said testator to refer to clause fifteen of his said will, and the court doth further find adjudge and decree that plaintiffs as such trustees and their successors in said trust have the power to sell for reinvestment the said real estate mentioned in said fourth clauses of said will as hereinbefore set out upon unanimous consent of all the trustees at the time of any such sale and upon the consent in writing of three fourths of such of the said testators' descendants over the age of twenty years as may be entitled at the time of any such sale to receive the net income under the provisions of clause sixteen of said testators will.

Third: The Court doth further find that the persons who are at the present time entitled to receive the net income under the provisions the clause sixteen of said testators will are as follows: Defendants Charles H. Peck and Pearl B. Desnoyers they being the children of said testators deceased son Charles H. Peck, Jr., Plaintiffs Stephen Peck, John A. Peck, Rebecca Dusenbery and Bell Peck Bryant defendants, Lidda Peck Greene, Mamie Peck Butcher, Mabel Peck Filmore, Marion Peck and William J. Peck; and the court doth further find that all of said persons so entitled to receive said net income except defendant Marion Peck who is a minor have entered into an agreement wherein it is provided that said net income shall be distributed as follows:——

To defendants Charles H. Peck and Pearl S. Desnoyers together three twentieths of said income. To Plaintiffs

Stephen Peck three twentieths of said income. To Plaintiff John A. Peck, three twentieths of said income. To Plaintiff Rebecca Dusenbery three twentieths of said income. To Plaintiff Belle Peck Bryant three and one half twentieths of said income. To Defendants Lidda Peck Greene and Mamie Peck Butcher each one and one half fortieths of said income. To defendants Mabel Peck Filmore and Marion Peck each one and one half fortieths of said income. To defendant William J. Peck one and one half twentieths of said income and the court doth further find adjudge and decree that the said persons and their successors in interest are entitled to receive and that it is the duty of plaintiffs as trustees under said will and their successors in said trust to distribute the net income of said trust estate in the sollowing shares and proportions to defendant Charles H. Peck and after his death to his successor or successors in interest, three fortieths of said net income to defendant Pearl B. Desnoyers and after her death to her successor or successors in interest three fortieths of said net income. To Plaintiff Stephen Peck and after his death to his successor or successors in interest three twentieths of said net income. To plaintiff John A. Peck and after his death to his successor or successors in interest three twentieths of said net income. To plaintiff Rebecca Dusenbery and after her death to her successors or successors in interest three twentieths of said net income. To plaintiff Belle Peck Bryant and after her death to her successor or successors in interest three and one half twentieth of said net income. To defendant Lidda Peck Greene and after her death to her successor or successors in interest one and one half fortieth of said net income. To defendant Mamie Peck Butcher and after death to her successor or successors in interest one and one half fortieths of said net income. To defendant Mabel Peck Filmore and after her

death to her successor or successors in interest one and one half fortieth of said net income. To defendant Marion Peck and after her death to her successor or successors in interest one and one half fortieth of said net income. To defendant William J. Peck and after his death to his successor or successors in interest one and one half twentieth of said net income.

Fourth: The Court doth further find adjudge and decree and dith instruct plaintiff as such trustees and their successors in said trust that none of the persons who may be entitled at any time to receive income from the trust estate created by the will of said testator, Charles H. Peck have any power to convoy, assign and encumber create any lien upon or to in any manner anticipate their respective shares of said income either before or after a payment of a part of said income has been made. The Court doth further order that the costs of this suit and all expenses incurred by plaintiffs in connection with this proceeding be paid by plaintiffs out of the funds of the trust estate.

Plaintiffs offered in evidence appointment of Claude B. Ricketts and Charles J. M. Donaldson Trustees in place of Stephen Peck, same being marked "P 24", and being in words and figures as follows:

P. 24

Whereas Charles H. Peck late of the City of St. Louis, Missouri, by his last Will and Testament which was duly admitted to probate in the Probate Court of said City of St. Louis on the 10th day of July A. D. 1899 after making certain devises and bequests in and by the first three numbered clauses of said Will did and by the Fourth numbered clause of said Will devise and bequeath all the

residue and remainder of his property real, personal and mixed and wherever situated unto Charles H. Peck jr. Stephen Peck, John A. Peck Rebecca Dusenbery wife of J. W. Dusenbery Jr. and Belle Peck and to the survivor of them and their successors in trust and to the heirs of such successors in trust and did thereafter provide and said trustees *such* take immediate possession and control of all said property therein devised and bequeathed to them in trust and collect and receive all the rents issues and income thereof, and did thereby give to said trustees and their successors in trust full power, subject to the exception and limitations thereinafter named to Manage, rent, lease, sell, and dispose of both the property belonging to his said estate at the time of his death, and also all property afterwards acquired by them, and did also give them full power to invest and reinvest the proceeds of any sale and did further provide that whenever in said will the words "said Trustees" were used they were meant to include not only the trustees therein named but also all successors of the trustees under said will, and, whereas in and by the 12th numbered clause of said last will and testament it *si* provided that in case the number of Trustees shall from any cause be reduced to three in number the remaining trustees shall within sixty days after any such vacancy may occur appoint to such vacancy or vacancies such person or persons as they shall agree upon to be trustees of said estate, and that such appointment shall be in writing duly signed and acknowledged by them, and shall be at once recorded in the office of the recorder of deeds for the said city of St. Louis Missouri, and whereas Charles H. Peck Jr. being the Chas. H. Peck mentioned in the said 4th clause of said last will and Testament died before his father, the said Chas. H. Peck the testator leaving as trustees Stephen Peck, John A. Peck, Rebecca Dusenbery (whose husband has since died)

Belle Peck, (since married to Max M. Bryant) and, Whereas since the death of Chas. H. Peck, and up to the 30th day of October 1911 the said four last mentioned persons duly qualified and have acted as trustees under the said last will and Testament of Chas. H. Peck, deceased, and Whereas on the 30th day of October 1911 Stephen Peck being same Stephen Peck mentioned and appointed trustee in and by the said fourth clause of said Will and Testament, did depart this life and by reason of the death of said Stephen Peck the number of trustees has been reduced to three, Now Therefor the undersigned John. A. Peck Rebecca Dusenbery, Widow of J. W. Dusenbery Jr. and Belle Bryant (nee Belle Peck) all of the surviving trustees appointed in and by the said fourth clause of said will in the exercise of the power conferred upon them by the said 12th clause of said last Will and Testament of Chas. H. Peck, deceased, and in pursuance of the directions and powers contained in the last Will and Testament have agreed upon and do hereby agree upon and appoint as Trustees to full the vacancies now existing in the number of trustees appointed under the last Will and Testament of Chas. H. Peck deceased, Claude B. Ricketts and Chas J. M. Donaldson, both of the City of St. Louis, State of Missouri and their respective heirs and assigns forever with all the powers, duties, benefits and rights as trustees of the estate of Chas. H. Peck deceased, conferred upon and imposed by the said last Will and Testament of Charles H. Peck, deceased and which the undersigned as surviving trustees have power to confer and impose. In Witness Whereof, the undersigned have hereunto set their hands and *s* seals this 28th day of December A. D. 1911.

John A. Peck. Rebecca P. Dusenbery Belle P. Bryant
All of the surviving Trustees of the Estate of Chas. H. Peck, Deceased.

State of Missouri
City of St. Louis ss.

On this 28th day of December 1911 before me a notary public in and for the City of St. Louis, Missouri, personally appeared John A. Peck, Belle Peck Bryant and Rebecca Dusenbery, all the surviving trustees of the estate of Chas. H. Peck, and to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed in Testimony Whereof I have hereunto set my hand and affixed my notarial seal at my office in the said City of St. Louis Missouri, the day and herein last written.

FLORENCE PAILLOU Notary Public
Within and for the City of St. Louis
Mo.

My term expires April 17, 1915

Seal:
Florence Paillou
Notary Public
City of St. Louis Mo.

The undersigned, Claude B. Ricketts and Charles J. M. Donaldson, hereby accept the above appointment as Trustees under the last Will and Testament of Charles H. Peck deceased.

CLAUDE B. RICKETTS
CHARLES J. M. DONALDSON

State of Missouri
City of St. Louis ss.

On this 28th day of December 1911 before me personally appeared Claude B. Ricketts and Charles J. M. Don-

aldson, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed, In Testimony Whereof I have hereunto set my hand and affixed my notarial seal at my office in the City of St. Louis Missouri, the day and year last above written.

FLORENCE PAILLOU Notary Public
Within and For the City of St. Louis
State of Missouri

My term expires April 17 1915

Seal:

Florence Paillou
Notary Public City
Of St. Louis Mo.

Filed and Recorded Dec. 29, 1911 at 9:25 A. M. Chas. F. Joy Recorder.

Plaintiffs offered in evidence appointment of Elizabeth P. Peck and Max M. Bryant as Trustees in place of Claude B. Ricketts and Charles J. M. Donaldson.

COUNSEL FOR DEFENDANT: In connection with that instrument it shows the appointment, or attempted appointment of two trustees therein named, Elizabeth P. Peck and Max M. Bryant is not made in accordance with the provisions of the will, which stated in the event there should be a vacancy, in the event they did not agree, the majority of them, then should apply to the Circuit Court, and the record discloses they did make that application to the Circuit Court, and that later dismissed it, and the remaining legatees then purported to appoint Max M. Bryant and Elizabeth P. Peck, and we submit at this

time as to Max M. Bryant and Elizabeth P. Peck the capacity is not established.

COUNSEL FOR PLAINTIFFS: I think there is a provision there in case the remaining failed to select two more then the beneficiaries under the will may do so.

THE COURT: The objection will be noted in the record.

The document was marked "P-25", and is in words and figures as follows:

P. 25

Whereas, Charles H. Peck, late of the City of St. Louis, and state of Missouri, by his last will and testament, which was duly admitted to probate in the Probate Court of the City of St. Louis, ans state of Missouri, on the 10th day of July, 1899, after making certain devises and bequests in and by the first three numbered clauses of said will, did in and by the fourth clause of said will devise and bequeath all the residue and remainder of his property, real personal and mixed, and wheresoever situated, unto Charles H. Peck Jr., Stephen Peck, John A. Peck, Rebecca P. Dusenbery wife of J. W. Dusenbery Jr., and Belle Peck since intermarried with and now the wife of Max M. Bryant, and to the survivor of them, and to their successors in trust, and to the heirs of such successor and successors in trust, and did thereafter provide that said trustees should take immediate possession and control of all of said property therein devised and bequeathed to them in trust, and collect and receive all of the rents issues and income thereof and did under and by virtue of the terms of said last will give to said trustees and their successors in trust full power, subject to the excep-

tions, conditions and limitations therein contained to manage, rent, lease sell and dispose of both the property belonging to the said estate at the time of his death, and also all property there. after acquired by them, and did also give full power to invest and re-invest the proceeds of any sale of any property in their possession, or under their charge and control, as said trustees, and did further provide that whenever in said will the words "said trustees" were used, they were meant to include not only the trustees therein named, but also all successors of the Trustees under said will; and Whereas in and by the twelfth clause of said last will and testament of said Charles H. Peck deceased, it is provided as follows: TWELFTH: Whenever any of said trustees shall remove and reside from the City or County of St. Louis Missouri and by so doing the number of resident trustees is reduced to three, the remaining or resident trustees shall without unnecessary delay notify said non resident to return to St. Louis within sixty days from the date of said notice, failing to do so, said non-resident trustees shall cease to be trustees, and when every any vacancy shall occur in the office of trustee from *from* the foregoing or any other cause to reduce the resident to three in number, as aforesaid the remaining trustees shall within sixty days after any such vacancy may occur appoint to such vacancy or vacancies such person or persons, as they shall agree to be the trustee or trustees, and such appointment shall be in writing duly signed and acknowledged by them, and be at once recorded in the Office of the Recorder of deeds for the City of St. Louis, Missouri, if the three remaining trustees do not agree within sixty days upon the person, or persons to fill said vacancy or vacancies, or if there be but two trustees remaining in Office, then and in either case the Circuit Court of the City of St. Louis, Mo., upon the application of the remaining trus-

tees in Office, or if they fail or neglect to make such application within sixty days, then said beneficiary under this will, (except those having fixed amounts only to paid to them, as provided in clause 15,) after due and timely notice *after due and timely* to the other beneficiaries as aforesaid, living over the age of eighteen year and to the guardian if any there be of such as may that age of the time and place of application, shall appoint a person or persons as trustee to fill each vacancy. And Whereas, said Charles H. Peck, Jr., being the said Charles H. Peck mentioned in the fourth clause of said last will and testament, of Charles H. Peck, deceased, died be*o*fre his father, the testator, leaving as trustees Stephen Peck, John A. Peck, Rebecca P. Dusenbery, whose husband has since died, and Belle P. Bryant; and Whereas since the death of said Charles H. Peck, and up to the 30th day of October, 1911, the said Stephen Peck, John A. Peck, Rebecca P. Dusenbery and Belle P. Bryant duly qualified and did act as trustees under the last will and testament of said Charles H. Peck, deceased; and whereas, on the 30th day of October, 1911. Stephen Peck, being the same Stephen Peck mentioned and appointed trustees in and by virtue of the terms of the last will and testament of said Charles H. Peck, deceased, did *part* this life, and by reason of the death of said Stephen Peck the number of trustees was reduced to three; and Whereas on the 28th day of December, 1911, the said John A. Peck, Rebecca P. Dusenbery and Belle P. Bryant by a written document dated the 28th day of December, 1911, did nominate and appoint Claude B. Ricketts and Charles J. M. Donaldson as two trustees of the estate of Charles H. Peck, deceased, as in said will of said Charles H. Peck, deceased, provided; and, Whereas, the said appointment of the said Claude B. Ricketts and Charles J. M. Donaldson as trustees of the estate of Charles H. Peck, was evidenced by

an instrument in writing duly signed and acknowledged by said John A. Peck, Rebecca P. Dusenbery, Belle P. Bryant, Claude B. Rickets and Charles J. M. Donaldson, and which said instrument in writing so appointing said Claude B. Ricketts and Charles J. M. Donaldson as trustees as aforesaid was duly filed for record and recorded in the Office of the Recorder of Deeds of the City of St. Louis, and state of Missouri; and whereas thereafter and on the 30th day of November, 1914, and the said Claude B. Ricketts signed as one of said trustees; and whereas on the 6th day of April, 1918, said Charles J. M. Donaldson departed this life, which resignation of said Claude B. Ricketts and the death of the said Charles J. M. Donaldson reduced the trustees of the Estate of Charles H. Peck living and in Office to three; and whereas under the terms of the will of said Charles H. Peck, deceased, it is provided that when the trustees of said estate shall be by death or otherwise reduced to three, that said three trustees remaining in Office may be an instrument in writing, appoint two additional persons as trustees of said estate, so that the number of said trustees shall be increased to five; and whereas the said Will of Charles H. Peck, deceased, provided that if the three trustees remaining in Office do not agree within sixty days upon the person or persons to fill said vacancy or vacancies, that the Circuit Court of the City of St. Louis, Missouri, upon application of the remaining trustees in Office, may appoint two trustees under the *iwll* of said Charles H. Peck, deceased, and further provides that if the trustees fail or neglect to make such application to the Circuit Court for the appointment of said two trustees, then the beneficiaries under this will, except those having fixed amounts only to be paid to them as provided in Clause fifteen of said will, shall after due and timely notice to the other beneficiaries of this will living and over

the age of eighteen years and to the guardian, if any there be, of such as may be under that age, of the time and place of application, appoint a person or persons as trustee to fill each existing vacancy; and Whereas the said John A. Peck, Rebecca P. Dusenbery and Belle P. Bryant could not, and did not, agree within sixty days after the death of Charles J. M. Donaldson on the persons to fill the two vacancies in the office of trustees of the estate of Charles H. Peck, deceased; and Whereas, John A. Peck and Rebecca P. Dusenbery, a majority of the trustees then in office did on the 3rd day of August, 1918, make application to the Circuit Court of the City of St. Louis and State of Missouri, for the appointment of two successors trustees, and, Whereas then after said John A. Peck and Rebecca P. Dusenbery a majority of the trustees of the estate of Charles H. Peck, then in office, did dismiss the proceedings and application then pending before the Circuit Court of the City of St. Louis, Missouri requesting said Court to make said appointments; and Whereas all of the persons being beneficiaries under said will, except those having fixed amounts only to be paid to them under clause fifteen of the will of Charles H. Peck, deceased, as follows:

JOHN A. PECK.
REBECCA P. DUSENBERY
BELLE P. BRYANT
PEARL P. BRYANT
PEARL P. DESNOYERS
LIDA P. GREEN
MAMIE BUTCHER
MABEL FILLMORE
formerly Mabel Peck.
MARION PECK now married and
known as Marion P. Cavanaugh
and WILLIAM J. PECK

And, Whereas all of the above mentioned persons are all above the age of eighteen years; and, Whereas due and timely notice has been given to all of the said beneficiaries above mentioned are disirous of appointing two persons as successor trustees to fill the two vacancies now existing, so that the number of trustees under the will of Charles H. Peck, deceased, shall be increased to five, as provided in the last will and testament of said Charles H. Peck, deceased, Now Therefore, the undersigned, each of whom are *on* of the beneficiaries above named does hereby nominate and appoint Elizabeth P. Peck, wife of John A. Peck, and Max M. Bryant, husband of Belle P. Bryant, as the two persons to fill the two existing vacancies in the Office of trustees of said estate. This appointment is made by the undersigned in and by virtue of the powers conferred upon them by the will of the said Charles H. Peck, deceased, and in pursuance of the directions and powers to make such appointments contained in said last will and testament, and we each and all agrees that this instrument and the signing of same shall be taken to and is the exercise of the powers of appointment contained in the last will and testament of Charles H. Peck, deceased. Unto the said Elizabeth P. Peck and Max M. Bryant, their respective successors, heirs and assigns forever, with all the powers, duties, benefits and rights as trustees of the estate of Charles H. Peck, deceased, which the undersigned as the beneficiaries, authorized and empowered by the will of Charles H. Peck, deceased, have power to confer. In Whereof, the undersigned have hereunto set their hands and seals this 8th day of September 1919.

JOH A. PECK
REBECCA P. DUSENBERY
WILLIAM J. PECK

MABEL P. FILLMORE
MARION P. CAVANAGH
BELLE P. BRYANT
PEARL P. DESNOYERS
LIDA P. GREEN
MAMIE P. BUTCHER

We, the undersigned, Elizabeth P. Peck wife of John A. Peck, and Max M. Bryant, both being the same persons mentioned in the foregoing instrument as having been appointed trustees under the will of Charles H. Peck, deceased, do hereby accept the above appointment, and agree to act as such trustees, and perform our duties according to the best of their ability.

St. Louis, Missouri November 13th, 1919.

MAX M. BRYANT
ELIZABETH P. PECK

State of Missouri
City of St. Louis ss.

On this 13th day of November 1919 before me personally appeared Elizabeth P. Peck wife of John A. Peck, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as here free act and deed. In Testamony Whereof I have hereunto set my hand and affixed my Notarial seal at my office in the City of St. Louis, Missouri, the day and year first above written.

My commission Expires February 29, 1920

GOLDIE A. HARRINGTON.
Notary Public.

SEAL:
"Goldie A. Harrington
Notary Public

City of St. Louis, Mo."

State of Missouri
City of St. Louis ss.

On this 13th day of November, 1919 before me personally appeared Max M. Bryant, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed. In Testimony Whereof, I have hereunto set my hand and affixed my Notarial seal at my Office in the City of St. Louis, Missouri, the day and year last above written.

My Commission Expires June 2, 1922

HERMAN SCHACHTER.
Notary Public.

SEAL:
"Herman Schachter
Notary Public
City of St. Louis, Mo."

State of New York
County of New York ss.

On this 9th day of *September* 1919 before me personally appeared John A. Peck, Rebecca P. Dusenbery, to me known to be the persons described in and who executed the foregoing instrument, and who acknowledged that they executed the same as their free act and deed. In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal at my office in the County of New York, State of New York, the day and year last above written.

My Commission Expires March 30, 1920

W. E. GARY Notary Public
344/10278.

SEAL:
"W. E. Gary
Notary Public
New York County."

State of California
County of Los Angeles ss.

On this 20th day of Oct. 1919, before me personally appeared Lida P. Green, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed. In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal at my Office in the County of *San Joaquin* state of California, the day and year last above written. My Commission Expires Nov. 6, 1921.

B. S. CRITTENDEN Notary *Publi* in and for County of San Joaquin State of California.

SEAL:
"B. S. Crittenden
Notary Public Eureka,
County of San Joaquin Cal."

State of Kansas.
County of Lyon. ss.

On this 27th day of October 1919, before me personally appeared Mamie P. Butcher, to me known as the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed. In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal at my Office in the City of Emporia, Kansas, the day and year last above written.

My Commission Expires Nov. 10, 1920

BEATRICE HOOVER
Notary Public.

SEAL:
"BEATRICE HOOVER
NOTARY PUBLIC
LYON COUNTY KANSAS."

State of New York
County of New York ss.

On this 9th day of September 1919 before me personally appeared Mabel P. Fillmore to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and *dee*. In Testimony Whereof I have hereunto set my hand and affixed my notarial seal at my office in the City of New York, N. Y. the day and year last above written.

My Commission Expires March 30, 1920

W. E. GARY
Notary Public 344/10278

SEAL:
"W. E. Gary
Notary Public
New York County".

State of New York
City of New York ss.

On the 9th day of September before me personally appeared Marion P. Cavanagh to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed. In Testimony Whereof, I have hereunto set my hand and affixed my official seal at

my office in the City of New York, and the state of New York the day and year last above written.

My Commission Expires March 30, 1920

W. E. GARY
Notary Public 344/10278

SEAL:
"W. E. Gary
Notary Public
New York County."

State of New York
City of New York ss.

On this 8th day of September 1919 before me personally appeared William J. Peck, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed. In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal at my office in the City of New York, and state of New York the day and year 1st above written.

My Commission Expires March 30, 1920

W. E. GARY
Notary Public 344/10278

SEAL:
W. E. GARY
NOTARY PUBLIC
NEW YORK COUNTY

State of Missouri
City of St. Louis ss.

On this 9th day of October 1919, before me personally appeared Belle P. Bryant, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free

act and deed. In testimony whereof, I have hereunto set my hand and affixed my notarial seal at my office in the City of St. Louis, and State of Missouri, the day and year last above written.

My Commission Expires February 29, 1920.

GOLDIE A HARRINGTON
Notary Public

Seal:
GOLDIE A. HARRINGTON
NOTARY PUBLIC
CITY OF ST. LOUIS, MO.

Filed and recorded Nov. 25, 1919 at 3:24 P. M.
Chas. F. Joy, Recorder.

Plaintiffs offered in evidence certificate of the death of John A. Peck, same being marked "P-26", and being in words and figures as follows:

P. 26

MISSOURI STATE BOARD OF HEALTH
NO. 5649 BUREAU OF VITAL STATISTICS

CERTIFICATE OF DEATH

1. PLACE OF DEATH — Filed No. 33044
County..... — Registered No. 9683
Township..... — Registration District No. 791
City St. Louis — Primary Registration District No. 1003
(No. St. John's Hospital St.....Ward)

2. FULL NAME John A. Peck
(a) Residence, No. 5123 Maple Ave. St., 5 Ward

(if nonresident, give City or town and state.)

Length of residence in city or town where death occured yr. mo. da. How long in U. S. if of foreign birth? yrs. mos. ds.

PERSONAL AND STATISTICAL PARTICULARS

3. SEX Male

4. Color of race WHITE

5. SINGLE? MARRIED, WIDOWED, or DE-VORCED (write the word)
Married

5a. IF MARRIED, WIDOWED, OR DEVORCED
HUSBAND OF
(or) WIFE OF
Elizabeth Peck

6. DATE OF BIRTH (Month, Day and Year)
February 13, 1858

7. AGE YEARS 68 MONTHS 7 DAYS 28 IF Less than 1 day, ...hours. or .....minutes.

OCCUPATION

8. Trade, profession or particular kind of work done, as spinner, sawer, *bookeeper*, etc. Real Estate

9. Industry or business in which work was done, as silk mill, saw mill, bank, etc. Agent

10. Date deceased last worked at this occupation (month and

,year).....

11. Total time (years) spent in this occupation.....

12. BIRTHPLACE (City or Town) St. Louis
(State or County)

FATHER

13. NAME Chas. Peck

14. BIRTHPLACE (City or Town) England
(State or County)

MOTHER

15. MAIDAN NAME Rebecca Adams

16. BIRTHPLACE (City or Town) England
(State or County)

INFORMANT Elizabeth Peck
(Address) 5123 Maple

18. BURIAL, CREMATION, OR REMOVAL
Place Bellfontaine Date Oct. 13, 1926

19. UNDERTAKER Harrigan & Sheahan
(Address) 711 N. Kingshighway

20. FILED Oct. 13 1926 Max C. Starkloff 10/12/26
Registrar.

MEDICAL CERTIFICATE OF DEATH

21. DATE OF DEATH (Month, Day, and Year)
Oct. 11 1926

22. I HEREBY CERTIFY, That I attended deceased from Sept. 17 1926, to Oct. 11, 1926
I last saw him alive on Oct. 11, 1926. Death is said to have occured on the date stated above, at 11:30 A. M. The principal cause of death and related causes of importance were as follows;

	Date of onset
Embolism Pulmonary	2 days

Other contributory causes of importance:

Gallstones — Operation	2 years

Name of operation ..... Date of 10/8/26
What test confirmed diagonsis? Op & P. M.
Was there an autopsy? Yes

23. If the death was due to external causes (violence), fill in also the following:
Accident, suicide, or homicide? ..... Date of injury .....
Where did injury occur? .....
(Specify city or town, county, state)
Specify whether injury occured in industry, in home, or in Public place.

Manner of injury .....
Nature of injury .....

24. Was disease or injury in any way related to occupa-

tion of deceased?.....
If so, specify .....

(Signed) John Mc H. Dean M. D.
(Address) 816 Metropolitan Bldg.

• • • •

STATE OF MISSOURI,
CITY OF JEFFERSON. ss.

I HEREBY CERTIFY that the above is a true and correct copy of the certificate of death of John A. Peck, filed in the office of the Central Bureau of Vital Statistics of the State of Missouri, and that the said certificate is deposited in said office and is a part of the permanent records of said bureau.

WITNESS my hand as Secretary of the Missouri State Board of Health and State Registrar of Vital Statistics, and the Seal of the Missouri State Board of Health.

Done at the City of Jefferson, this 19th day
SEAL: of September, 1933.

E. T. McGAUGH
State Registrar Bureau of Vital Statistics
PER ..... Clerk

STATE OF MISSOURI
DEPARTMENT OF STATE

TO ALL TO WHOM PRESENTS SHALL COME:

I, DWIGHT H. BROWN, Secretary of State of the State of Missouri, and Keeper of the Great Seal thereof, hereby certify that E. T. McGaugh whose name is affixed to the certificate was on the 19th day of September A. D. Nineteen Hundred and thirty-three State Registrar Bureau of Vital Statistics within and for the State of Missouri, duly commissioned and qualified according to law,

and duly authorized according to the laws of said State to grant said Certificate, and that full faith and credit are due his official acts.

IN TESTIMONY WHEREOF, I hereunto set
SEAL: my hand and affix the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 19th day of September A. D. Nineteen Hundred and Thirty three.

DWIGHT H. BROWN
Secretary of State

J. R. HOLMAN
Chief Clerk

State of Missouri,
City of St. Louis, ss.

Thomas S. Lytle, of the City of St. Louis, State of Missouri, being sworn, upon his oath states, that he has assisted in managing and is familiar with all of the business affairs of the estate of Thomas Ranken, Jr., deceased, and of the affairs of his heirs for many years past; that he is familiar with the family history of Thomas Ranken, Jr's, family and of their residence and citizenship;

That said Thomas Ranken, Jr., is the same person in whom certain title was vested, by deed dated February 13, 1897, from Bennett H. Davis to Thomas Ranken, Jr., et al., to certain lands located on the right bank of the Rio Bravo or Rio Grande River, in the District of Bravos, in the State of Chihuahua, of the Republic of Mexico, known by the name of "La Santisima"; and in whom also was vested a certain interest, by deed dated February 13, 1897, from Bennett H. Davis to Robert Ranken, Jr., et al., to certain tracts of land located on the right bank of

the River Bravo or Rio Grande River, in the former canton of Ojinaga, in the State of Chihuahua, Republic of Mexico, said tracts being known by the names of "Vado de Piedra", "San Antonio and "El Comedor", a portion of which aforesaid lands is now *now* located in the State of Texas, United States of America.

Affiant further states:-

Thomas Ranken, Jr., was born the 27th September, 1841, and died *interstate* in St. Louis County, Missouri, a citizen of the United States, on the 3rd July, 1900. He left surviving him as his sole heirs:

(a) David Ranken, brother, born 10th April, 1834, died intestate a citizen of and resident in United States, single and never having married, on 27th January, 1912.

(b) Robert Patton Ranken, brother, born 26th January, 1836, died intestate a resident of Ireland and a citizen of Great Britain, single and never having married, on 30th January, 1923.

(c) Jane Ranken Lyle, sister, born 12th May, 1838, married to Hugh Lyle in Ireland 13th July, 1858, died intestate a citizen of and resident in Great Britain, 4th February, 1909.

(d) William Ranken, brother, born 2nd January, 1844, in Ireland and died intestate 26th September, 1927, a resident and citizen of Great Britain single and, never having married.

(e) Mary Ranken, sister, born 11th August, 1846, in Ireland and died intestate 23rd September, 1919, a resident of and citizen of Great Britain, single and never having married.

The following heirs of the aforesaid Thomas Ranken, Jr., died since his death leaving as their sole heirs the following:

(a) Jane Ranken Lyle, died intestate, a citizen of Gerat Britain, leaving as her sole heirs;

(1) Thomas Ranken Lyle, son, born 26th August, 1860, a citizen of Great Britain, which citizenship he has maintained and is now resident in Melbourne, Australia;

(2) Margaret Church Lytle, daughter, born 11th June, 1862, in Ireland, and she is now a resident of Missouri and a citizen of the United States, and is the wife of this affiant, Thomas Smith Lytle, a citizen of the United States;

(3) Jane Patton Hanna, daughter, born 22nd March, 1865, in Ireland, and is now resident there and is a citizen of Great Britain, the wife of Samuel Hanna, a citizen of Great Britain.

(4) Hugh Ranken Lyle, son, born 30th March, 1868, In Ireland, died a widower, as a duly naturalized citizen of the United States, 29th April, 1913, leaving neither a widow nor descendants. He left a will devising his entire estate to the Misisssippi Valley Trust Company, a Missouri corporation, in trust for his sisters, Jane Patton Hanna and Margaret Church Lytle, during their lives, with remainder to their issue at their death.

(5) Robert P. R. Lyle, son, born 14th April, 1870, in Ireland, a citizen of Great Britain, where he now resides and maintains the same citizenship.

(6) David Ranken Lyle, son, born 16th June, 1872, in Ireland, a citizen of Great Britain, and he now resides in Ireland and maintains the citizenship of his birth.

(b) David Ranken died 27th January, 1912, intestate, St. Louis, Missouri, a duly naturalized citizen of the United States. He died leaving neither widow nor descendants, and leaving as his sole heirs his aforesaid brothers Robert P. Ranken and Williams Ranken, and

his sister Mary Ranken, and his nephews and nieces—Thomas Ranken Lyle, Margaret Church Lytle, Jane Patton Hanna, David Ranken Lyle, and Robert P. R. Lyle.

(c) Mary Ranken died intestate, never having married, a resident of and citizen of Great Britain, 23rd September, 1919, leaving as her sole heirs her brothers, Robert P. Ranken and William Ranken, and her five nephews and nieces, Thomas Ranken Lyle, Margaret Church Lytle, Jane Patton Hanna, David Ranken Lyle and Robert P. R. Lyle.

(d) Robert Patton Ranken died 30th January, 1923, never having married, and being at the time of his death a citizen of and resident in Great Britain and leaving as his sole heirs his aforesaid brother William Ranken and his aforesaid five nephews and nieces, children of his sister, Jane Ranken Lyle, Thomas Ranken Lyle, Margaret Church Lytle, Jane Patton Hanna, David Ranken Lyle and Robert P. R. Lyle.

(e) William Ranken died intestate, never married, a resident of and citizen of Great Britain, 26th September, 1927, leaving as his sole heirs his aforesaid five nephews and nieces, children of his sister, Jane Ranken Lyle, Thomas Ranken Lyle and Robert P. R. Lyle.

Affiant further states that no assignment, sale, conveyance or transfer of any interest in the aforesaid property was made in any manner other than the aforesaid descent and distribution, through intestacy or will, as the case is stated, and that the title to the said Lands so originally owned by said Thomas Ranken, Jr., is at this time lodged in and held exclusively by the following of the aforesaid heirs, viz.,

Thomas Ranken Lyle	46/240ths
Margaret Church Lytle	46/240ths

Jane Patton Hanna 46/240ths
Robert P. R. Lyle 46/240ths
David Ranken Lyle 46/240ths
Mississippi Valley Trust Co., of
St. Louis, Missouri, Trustee under
the will of Hugh P. Lyle, dec.,
for Margaret Church Lytle 5/240ths
for Jane Patton Hanna 5/240ths

240/240ths

And further affiant saith not.

(Signed) THOMAS S. LYTLE.

Subscribed and sworn to before me, a notary public, within and for the City of St. Louis, State of Missouri, this 14th day of September, 1933. My term expires February 17, 1934.

(Signed) EWALD F. SUNKEL
Notary Public.

Seal:

W I L L

I, Hugh R. Lyle, of the City of St. Louis, Missouri, make, publish and declare this instrument as and for my last will and testament, hereby revoking all wills and codicils thereto by me heretofore made.

FIRST: I direct my executor hereinafter named to promptly pay all my just debts and expenses of my last illness and funeral.

SECOND: If my beloved wife, Jessie A. Lyle, survive me, then I give and bequeath unto her absolutely the sum of Ten Thousand Dollars ($10,000) in cash, or in securities to that amount at reasonable value, to be selected by her from my estate, and also all my household and kitchen

furniture and furnishings and articles of comfort and pleasure used in our home, and all jewelry and wearing apparel. In the event of her death before my decease said legacy shall stand revoked and be void, and said amount and said chattels shall become part of the residue of my estate and go with such residue as hereinafter provided.

THIRD: I give and bequeath the sum of One Hundred Dollars ($100) to each child living at my death of the following three (3) persons, to wit: Albert A. Ramsey of Carthage, Missouri; Robert W. Ramsey of Atchison, Kansas and Elizabeth L. Longston of Independence, Kansas, In the event any of the children of said three (3) persons be minors at the time of my death, then said persons respectively shall, as trustees, receive the amounts bequeathed to their respective minor children, said trusts respectively to continue until the respective beneficiaries become of age, and in the event of the death of any beneficiaries during their respective trusts, their respective trust estate shall vest absolutely in the respective heirs at law of such deceased beneficiaries.

FOURTH: I direct that all the foregoing legacies shall be paid and satisfied without deduction of any inheritance tax or charges therefrom, and if by reason of any law any inheritance tax be *ap*yable with respect to said legacies or any of them, then I direct that all such taxes shall be paid thereon out of the residue of my estate, and that the above legatees receive the property and the full amounts above bequeathed to them respectively.

FIFTH: In the event, at my death, I shall be the owner of any real estate situate without the States of Missouri, I direct that an administrator with will annexed to had on my estate in the various jurisdiction in which my estate may be located, or in which I may be interested, and

that the legal representatives of my estate in their respective jurisdiction sell and convey any real estate or interests in real estate so owned by me on such terms as such representatives, respectively, shall deem proper and upon any sale or sales I authorize and empower such representatives to grant and convey to any *pruchease* or purchasers any real estate or interest in real estate so sold. I direct that all such proceeds of sale of any personalty in the hands of such representatives *representatives* respectively shall from time to time be paid and transferred to the trustees of the residue of my estate hereinafter named, and that such trustees shall receive and hold the same as part of the trust estate hereinafter devised and bequeathed to said trustee, and under the limitations hereinafter declared.

SIXTH: I give, devise and bequeath unto the Mississippi Valley Trust Company all the rest and residues of my real and personal estate in trust for the beneficiaries hereinafter declared. If my beloved wife, Jessie A. Lyle, survive me, then said trust shall first continue for and during her natural lifetime, or until she remarry, if she do so, and during said trust for her, the trustee shall from time to time pay to her all of the net income of the trust estate on her written receipts or orders, on the death or re-marriage of my wife, her interest in the trust estate shall terminate and end. After the death or re-marriage of my said wife, if I have *decendants* surviving, said trust shall continue until all my then surviving descendants become of legal age, and said trust shall continue for the benefit per stirpes of my descendants. Said trustee shall from time to time pay said descendants who are of age their respective porportions of the net income of the trust estate, and shall set aside for minor beneficiaries the respective proportions of such net income of such minors,

and from time to time apply the net income to set aside for such minors for their maintenance, education and pleasure, and as the trustee in its discretion shall deem proper, the trustee considering the station in life of such minors and means at their command or held in trust for them respectively. When all af my descendants, surviving at the death of my wife after my decease or at my death in the event I shall die before my wife, become of legal age under the laws of Missouri said trust for my descendants shall end, and the trustees shall convey, transfer, deliver and pay per stirpes to them beneficiaries of the trust estate all of the then principal and income of the trust estate, and said trust shall terminate and end. In the event at my death I leave no descendants or in the event of the death of all my descendants during the continuance of said trust for my wife, if she survive me, then on my death or re-marriage after my decease, as the case may be, then and thereafter said trust shall continue for and during the natural life of the survivor of my two (2) sisters, Margaret G. Lytle, wife of Thomas S. Lytle, of Belfast Ireland and Jane P. Hanna, wife of Samuel Hanna, of Newtonardes, County Down, Ireland. During the continuance of said trust during the life time of the survivor of my said two (2) sisters, the trustee shall from time to time pay one-half (½) of the net income of the trust estate of my said sister, Margaret C. Lytle, or per stirpes to her descendants surviving at the respective times of such payments, and said trustee shall from time to time pay the other one-half (½) to the net income of the trust estate of my said sister, Jane P. Hanna, or per stirpes to her descendants surviving at the respective times of such payments. If either of my said sisters should die without descendants during the said trust for the survivor of them, or if during the continuance of said trust all descendants of my deceased sister should

die, then and thereafter the trustee shall pay all of the net income of the trust estate to my surviving sister during the continuance of said trust. On the death of the survivor of my said two (2) sisters, after the death of or re-marriage of my wife as aforesaid, said trust estate shall by the trustee be conveyed, transferred, delivered and paid free of trust to the descendants per stirpes of my said sister, Margaret C. Lytle, and the other one-half (½) of the then principal and income of the trust estate shall by the trustee be conveyed, transferred, delivered and paid free of trust to the descendants per stirpes of my said sister, Jane P. Hanna; and in the event of the termination of said trust as aforesaid, if there be no descendants of either of my said sisters, then the trustee shall free of trust convey, transfer, deliver and pay all of the then principal and income of the trust estate to the descendants per stirpes of my other sister leaving descendants, and in the event of the termination of said trust as aforesaid there be no descendants surviving of either of my two (2) sisters, then the trustee shall free of trust convey, transfer, deliver and pay all of the then principal and income of the trust estate to my then heirs at law under the laws of Missouri. From time to time on the death of any of the beneficiaries of the trust estate under the above limitations the trustee may, in its discretion, out of the principal of the trust estate, pay the expenses of the last illness and funeral of any deceased beneficiary, and the foregoing limitations to the trust estate are especially made subject to the discretionary payment of such expenses.

SEVENTH: During the continuance of said trust for the respective beneficiaries as above limited, the trustee shall have and hold the trust estate, and the respective beneficiaries from time shall enjoy the same, subject to

the following further limitations, powers and discretions in addition to those above mentioned, to-wit:

During the trust the Trustee fully authorized and empowered to manage and control the trust estate and the property thereof as it may deem most advantageous to the interests of the beneficiary or beneficiaries, and from time to time collect the rents, dividends, interest, income and profits of and from the real and personal property of the trust estate.

At its discretion the Trustee from time to time may invest and reinvest the trust funds in notes secured by mortgage or deed of trust, or in high grade investment bonds or stocks of any corporation of or in any state, or in notes with any of said securities as collateral; and said Trustee may from time to time sell, exchange, transfer and deliver any investment at its discretion.

Said Trustee invest such portion of the trust fund in real estate as in its judgment may best conserve to the safety of the estate or may meet the wants and comforts of the beneficiary, taking the title to itself in trust for the same used and under the same powers as are herein provided for the property transferred to it in trust, and with power to sell and convey and encumber any such real estate.

Said Trustee may from time to time let and rent any part- or all of the real property belonging to the trust estate or any interest therein, or said Trustee may from time to time demise and lease for any term or terms however long, any part, parts or all of said real propety or any interest therein; and all said real property or interest therein so let and rented or so demised and leased, shall be upon such rental and terms as the Trustee in its sole discretion may deem reasonable.

Said Trustee may from time to time bargain and sell

any real property belonging to the trust estate or any interest therein, either at public or private sale and with or without notice, for such price or prices and on such terms as the Trustee may deem reasonable, and for all cash or part cash and part deferred payments, any deferred payments to be secured by first mortgage deed of trust on the property sold; and said Trustee is authorized and empowered to grant and convey by general warranty or special warranty or quit-claim deed or deeds any such property so sold or interest therein, said deed or deeds containing such covenants binding the trust estate as the Trustees may deem proper.

Said Trustee may improve any real property of the trust estate by erecting, or causing to be erected, any building or buildings thereon for business or residence purposes, or both, and of such cost as the trustee in its discretion may deem advisable, and from time to time said trustee may remove any such building or buildings and erect new building or buildings in lieu thereof, or said Trustee may alter or re-construct any building or buildings upon the real property of the trust estate.

Said Trustee shall insure against fire, and may insure against other casualties, all insurable buildings or improvements upon any real property belonging to the trust estate, the insurance to be for such amounts as the Trustee may deem reasonable, and the expenses thereof shall be chargeable to and paid out of the income of the trust estate. In case of loss or injury from fire or other casualties insured against the Trustee in its discretion may expand the money received in payment of such loss or injury in the repair or re-building or re-construction of the improvements damaged or destroyed, or the Trustee may use other trust funds for that purpose,

Said Trustee shall, at the expense of the income of the trust estate, keep the building or buildings upon any

real property of the trust estate in good tenantable order and condition, and from time to time make necessary or useful repairs thereto. The Trustee shall pay all general taxes or annual special taxes assessed against the real or personal property of the trust estate and charge the same to the income of the trust estate, together with all the expenses in the management and preservation of the property of the trust estate. All special taxes assessed against the real property of the trust estate for construction of streets or alleys or sewers and for other general public improvements, or the cost thereof if done under private contracts, shall from time to time be paid by the Trustee out of the income of the trust estate.

The trustee shall permit the beneficiary of the time being with any family such beneficiary may have, to occupy and use as a home real estate held in trust, such use to be rent free, and without impeachment for waste and without any accountability to the trustee for the reasonable wear and use thereof or injury by casualty.

The Trustee is not to exceed the aforesaid payments out of the income of the trust fund, in whatever form it may be, except in case of extremity of the beneficiary, or if by misfortune or unavoidable accident the value of the trust estate shall become greatly diminished and imperious necessity affecting the then beneficiary or the family of the beneficiary should in the judgment of the Trustee render it proper to use some portion of the principal, but then only as long as the urgency of the necessity shall continue, and the *easte* occasioned to the principal thereby shall be repaired out of the future income of the trust fund if in the judgment of the Trustee the same can be done without serious inconvenience to the beneficiary or the family of the beneficiary. As to what is such extremity or *imperous* necessity and what amount of the

principal is necessary to be used the Trustee shall exercise its best discretion.

The beneficiaries shall not encumber or sell or convey or in any manner anticipate his or her interests in the trust fund, principal or income, and any such sale, transfer, assignment or encumbrance shall be utterly void; and if any creditor attempt by suit or otherwise to subject the interests of any beneficiary to the payment of any of the debts of such beneficiary, then and thereafter the trustee shall not be obliged to make the payments as hereinbefore provided to such beneficiaries, respectively, but during the rest of that period during which the trust is to continue may in its discretion apply such sums, or such part thereof as it thinks reasonable for the support or comfort of the then beneficiaries, or the family of the beneficiaries, respectively.

The Trustee shall annually render to the beneficiaries a written statement and account of the transactions of the trust estate during the then preceding year.

Said Trustee shall receive reasonable compensation for its services rendered in connection with the real property of the trust estate or interest therein, and said Trustee for its services rendered to the personal property of the trust estate shall receive usual commission of five per cent (5%) as disbursements from time to time of income and principal, such compensation as to disbursements of income to be out of income of the trust estate, and such compensation as to disbursements of principal to be paid out of the principal of the trust estate.

EIGHTH: I nominate and appoint as my executor the said Mississippi Valley Trust Company, a corporation under the laws of Missouri, having its principal office in said City of St. Louis.

In Witness Whereof, I hereunto set my hand at the

City of St. Louis Missouri, this 6th day of May, A. D. 1909.

HUGH R. LYLE

We Hereby Certify, that Hugh R. Lyle, the testator named in the foregoing instrument of writing, subscribed his name thereto on this day and to us declared the same to be his last will and testament; that we *subscrib* out names hereto as witnesses in the presence and at the request of said testator in the presence of each other, and that at the time of the execution of said instrument as aforesaid, and of our subscribing the same as witnesses, the said testator was of sound and disposing mind, to the best of our knowledge and belief.

Witness our hands at the City of St. Louis, Mo., this 6th day of May, A. D. 1909.

CHARLES W. MORATH
RUFUS R. CALBAUGH
LOUIS W. FRIEKE.

COUNTY OF ST. LOUIS, ss.
THE STATE OF MISSOURI,

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME •- GREETING:

KNOW YE, That the last will of Hugh R. Lyle deceased, hath in due *from* of law been exhibited, proved and recorded in the office of the Clerk of the Probate Court for the County of St. Louis, a copy of which is hereto annexed; and inasmuch as it appears that Mississippi Valley Trust Company has been appointed Executor in and by the said last will to execute the same,
and to the end that property of the Testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last Will may be ex-

ecuted according to the request of the Testator we do hereby authorize the said Mississippi Valley Trust Company as such Executor to collect and secure all and singular the goods and chattels, right and credits, which were of the said Hugh R. Lyle at the time of his death in whosoever's possession they may be found, and to perform and fulfill all such duties as may be enjoined on it by said Will so far as there shall be property and the law charge it and in general to do and perform all other things which are now or hereafter may be required of it by law.

IN TESTIMONY WHEREOF, I Chris. D. Wolff Clerk of the Probate Court of the County of St. Louis, hereto sign my name and affix the seal of said court, at office this 5th day of May A. D. 1913.

CHRIS. D. WOLFF Clerk of Probate

I, Chris D. Wolff Clerk of the Probate Court of the County of St. Louis, certify that the foregoing Letters TESTAMENTARY are truley recorded in my office, this 5th day of May, 1913.

CHRIS. D. WOLFF
Clerk of Probate.

STATE OF MISSOURI
DEPARTMENT OF FINANCE

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, C. E. French, Commissioner of Finance of the State of Missouri, hereby certify that the annexed pages contain a full, true and complete copy of CERTIFICATE

OF INCORPORATION of the MISSISSIPPI VALLEY TRUST COMPANY, St. Louis, Missouri, as the same appears on file and of record in this office.

In Testimony Whereof, I hereunto set my hand and affix the seal of my office. Done at the City of Jefferson, this second day of October A. D. 1925.

SEAL:

C. E. FRENCH
Commissioner of Finance

STATE OF MISSOURI
NO. 29

CERTIFICATE OF INCORPORATION

WHEREAS, Charles Clark, S. R. Francis, John D. Perry and others have filed in the office of the Secretary of State, Article of Association or Agreement in writing, as provided by law, and have in all respects complied with the requirements of law governing the formation of TRUST COMPANIES.

NOW THEREFORE, I, Alexander A. Lesueur, Secretary of State of Missouri, in virtue and by authority of law, do hereby certify that said parties, their associates and successors, have become a body corporate and duly organized under the name of MISSISSIPPI VALLEY TRUST COMPANY and have all the rights and privileges granted to Trust Companies, under the laws of this State. And That the amount of the authorized capital stock of said Corporation is TWO MILLION DOLLARS, and the amount thereof subscribed in FIVE HUNDRED THOUSAND DOLLARS.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at the City

SEAL:

of Jefferson this Thrid day of October A. D. eighteen hundred and ninety.

A. A. LESUEUR,
Secretary of State.

Plaintiffs offered in evidence the following questions and answers from the deposition of

JESSE McDONALD

taken before Sarah A. Bauman, Notary Public, City of St. Louis, Mo., on the 18th day of April, 1934.

Interrogatory No. 1:

My name is Jesse McDonald; age 69 years; residence, 4542 Pershing Avenue, St. Louis, Missouri, U. S. A., and occupation lawyer.

Interrogatory No. 2:

I have lived in St. Louis, Missouri, since March, 1886, and I have practiced law there since July, 1890.

Interrogatory No. 3:

Did you know Thomas Ranken, Jr. in his lifetime?

3. I knew the family of Thomas Ranken, Jr., and the family history at his death, but I had no immediate acquaintance with him.

COUNSEL FOR DEFENDANT: We object to the first part of that answer, being not responsive to the interrogatory directed to the witness, the fact as to the family acquaintance.

THE COURT: The Court sustains the objection.

COUNSEL FOR PLAINTIFFS: Note our exception.

Interrogatory No. 5:

If you have said that you knew Thomas Ranken, Jr. in his lifetime, then state whether or not said Thomas Ranken, Jr. is the same person who was named as a grantee in a deed dated February 3rd, 1897 from Bennett H. Davis to Thomas Ranken, Jr., A. L. Shapleigh and Charles H. Peck to certain lands located on the right bank of the Rio Bravo or Rio Grande River in the District of Bravos in the State of Chihuahua, Republic of Mexico known by the name of "La Santisima", and who was also named as a grantee in a deed dated February 3rd, 1897 from Bennett H. Davis to Thomas Ranken, Jr., A. L. Shapleigh, Charles H. Peck, et al. to certain tracts of land located on the right bank of the Rio Bravo or Rio Grande River in the former canton of Ojinaga in the State of Chihuahua, Republic of Mexico, said tracts being known by the names of "Vado de Piedra", "San Antonio," and "El Comedor".

5. From business and social acquaintance with the family of Thomas Ranken, Jr., and intimate knowledge of the family's business and properties, I can state that I know the Thomas Ranken, Jr., referred to in this cause was the same person named as grantee in the certain deed dated February 3, 1897, running from Bennett H. Davis to Thomas Ranken, Jr., A. L. Shapleigh and Charles H. Peck covering certain lands situate on the Rio Bravo or Rio Grande River in the State of Chihuahua, Republic of Mexico, known as "La Santisima"; and who is also named as grantee in a deed dated February 3, 1897, from Bennett H. Davis to Thomas Ranken, Jr., A. L. Shapleigh, Charles H. Peck and others covering land on the right bank of the Rio Bravo or Rio Grande River in the

State of Chihuahua, Mexico, said tracts being known by the names of "Vado de Piedra", "San Antonio" and "El Comedor".

COUNSEL FOR DEFENDANT: We submit the answer is not responsive to the question, is necessarily based upon hearsay testimony, and as such as hearsay testimony.

THE COURT: The Court will sustain the objection.

COUNSEL FOR PLAINTIFFS: I would just like to state of course the question of pedigree is of course an exception to the hearsay rule.

THE COURT: He does not show himself to be a member of the family, and would be hearsay testimony.

COUNSEL FOR PLAINTIFFS: Yes, sir, it is hearsay, but the question of pedigree is an exception to the hearsay rule.

THE COURT: What some of the family told him. I sustain the objection.

COUNSEL FOR PLAINTIFFS: Note our exception.

Interrogatory No. 6:

State whether or not you know the laws of the State of Missouri governing the devolution of real estate.

COUNSEL FOR DEFENDANT: That is objected to because it is, obviously, immaterial and irrelevant.

THE COURT: He can answer it, whether he knows or not. I don't think it has any material bearing.

COUNSEL FOR DEFENDANT: Even whether he knows is irrelevant and immaterial.

THE COURT: I don't think that is far reaching. He can answer.

6. I know the law of the State of Missouri covering the descent of real estate owned by persons dying intestate.

Interrogatory No. 7:

If you have answered the last preceding interrogatory in the affirmative, then state whether or not you are qualified to say who are the present owners of the Mexican interests hereinbefore described and at one time owned by Thomas Ranken, Jr., giving the present owners, and if you have not already done so in answer to the preceding interrogatory, state in detail your qualifications to answer this interrogatory.

7. I am qualified to state who are the present owners of the real estate formerly owned by Thomas Ranken, Jr., in Mexico hereinbefore referred to. My qualifications to make this statement is based on intimate knowledge of the Thomas Ranken, Junior's family through social intercourse and business relations in looking after their business affairs and their properties as attorney and agent for a long period of years beginning actively soon after the death of the aforesaid Thomas Ranken, Jr.

COUNSEL FOR DEFENDANT: Now, if the Court please, the answer is not responsive, it is necessarily based on what the law of the State of Missouri is, he has not shown any knowledge of the laws of Mexico at all.

THE COURT: Simply calls for a conclusion, expression of a legal opinion.

(The objection was sustained).

Q Interrogatory No. 8:

If you have said that you are qualified to do so, then please give names and addresses of the present owners and the proportion of their interests, together with the intermediate owners between them and Thomas Ranken, Jr.

Objected to by counsel for defendant, and after a lengthy discussion the Court sustained the objection; to which action of the Court plaintiffs excepted.

COUNSEL FOR PLAINTIFFS: Your Honor, I would like the record to show that in connection with the deposition which the Court has ruled on, that in accordance with what I stated at the time I offered the deposition I would like the record to show that in that connection the plaintiffs rendered for consideration of the Court Section 2908 of the Revised Statutes of Missouri of 1929, of which the Court, I believe, would take judicial knowledge, but if the Court thinks it is better practice I will read it right now; probably that would be best.

COUNSEL FOR DEFENDANT: Of course, we offer the objection that the statute of Missouri is irrelevant and immaterial.

In connection with above, counsel for plaintiffs read to the Court from the Revised Statutes of Missouri of 1899, and also Sec. 2910 of the same statute. Also Article 3129 of the Civil Code of the State of Chihuahua, Mexico, and Article 3453 of the same Code.

MANUEL L. CARDONA,

a witness for plaintiffs, being duly sworn, testified as follows:

ON DIRECT EXAMINATION:

My name is Manuel L. Cardona. I live at 519 North Raynor Street, El Paso. I have an office at Calle Blanco Gonzalez, Juarez. I am a citizen of Mexico. I am an engineer. I got my scientific education in the National School of Engineers in Mexico City. I have practiced my profession about twenty-six years.

I made a survey of part of the tract of land in Mexico known as La Santisima, about March or April, 1923. Mr. A. P. Coles, as agent of Mr. Shapleigh and associates, employed me to make the survey. I never knew A. L. Shapleigh or Thomas Ranken, Jr. I knew Mr. Haff. He is a lawyer from Kansas City, I guess. He has an office in Kansas City, and he has an office in Mexico City.

I had power of attorney from Mr. Shapleigh and associates to make contracts for the renting of the La Santisima tract of land, and do some other things. That was after I made this survey in 1923. I don't remember well, but I think I received the power of attorney in 1924. In doing the work I was authorized to do under the power of attorney I *can* in contact with Mr. A. P. Coles. Mr. A. P. Coles paid me part of the money for the surveying, and received some money directly from Shapleigh and associates. Mr. Haff paid me some. I went to Chihuahua to get some information for him. I don't remember when that was.

I surveyed part of La Santisima. La Santisima is a very big tract of land, and it does not belong to the same people. I figure in hectares, and there are about 39,000 hectares in the Santisima tract. That is about 100,000

acres. That is only the part owned by Shapleigh and associates. That is 32-2/3, some fraction I don't remember, of the entire tract.

The west end of La Santisima is southwest of McNary, a station on the Southern Pacific Railroad, on the American side of the river, and about fifty-eight miles east of El Paso.

The survey was made to comply with the Agrarian Law of the State of Chihuahua. I completed the survey.

I recently surveyed what is known as El Guayuco Banco, and tied the Guayuco Banco into the La Santisima with a view of determining whether or not the El Guayuco Banco is cut from the La Santisima tract.

I first went on the La Santisima tract in 1923, and have been on it from time to time since then; I used to go every*thing* two or three months. I know of my own personal knowledge the tract known as El Guayuco Banco was cut from Mexico, and was cut from the La Santisima tract.

I prepared a map to show the relationship between El Guayuco Banco and the balance of the La Santisima tract. The boundaries of La Santisima are shown in red. El Guayuco Banco was cut from the south to the north side of the river in 1926, but I don't remember what month. I was on the Guayuco Banco before and after the change in the course of the river.

ON CROSS EXAMINATION:

I made this map myself from surveying the land.

I don't know whether Mr. Shapleigh himself came here in 1923 at the time I was employed by Mr. Coles. I never met him then or at any other time. My employment was through Mr. Coles. I made the survey during the year 1923, for the purpose of applying the Agrarian Law of the State of Chihuahua. This map is a map of the survey

made by me at that time. I don't think this map was filed in Chihuahua in compliance with the Agrarian Law or other law, because they did not have all the other papers they needed ready to send to Chihuahua. I made the maps and sent them to Mr. Haff. I saw Mr. Haff in El Paso after I made the survey, I think about three months. The first map I made was made from information furnished me by the owners without going on the ground; then I went to the ground and made the maps the way they had to be done. After the survey was made on the ground I went with Mr. Haff to Chihuahua in regard to it. The survey on the ground was made in March or April, 1923, and the trip to Chihuahua I think was probably three months later.

Preliminary to the surveys I made on the ground the owners or claimants furnished me some kind of field notes, but really without any value. Afterwards they sent me some maps from Mr. John P. Randolph, I think dated something like 1887.

The part of La Santisima I surveyed was some 39,000 hectares.

Mr. Haff went to lawyers in Chihuahua in the effort to comply with the Agrarian Law. He went to Mr. Porras Guillermo. Mr. Taliamentes was Chief of the Agrarian Commission at that time, and I went to see him on Mr. Haff's business. I did not abandon the effort to comply with the Agrarian Law. I didn't go ahead because I was awaiting instructions from Mr. Haff. I don't know if he dropped it or not. He was attending to that business, and I was only employed by him to make the survey.

I had correspondence with Mr. Shapleigh when the Agrarians went to take possession of this land. A settlement was made on a part of the cultivable or irrigable portion of the land. I knew of two colonies that attempted to settle on the land at that time. I don't know how many

people there were in the two settlements. They did not start cultivation but very little. I don't know how many of those colonies afterwards received grant or location from the State authorities.

I have been on the ground since then. I do not know how many colonies are on it now, but there are several, I think about 4,000 people.

ON REDIRECT EXAMINATION:

I had a contract in writing with the owners for the survey I made of La Santisima. This is the contract, and this is my signature.

The document was introduced in evidence by plaintiffs, was marked "P-27", and is in words and figures as follows:

P. 27

El Paso, Texas. March 2, 1923.

This contract made and entered into be and between A. L. Shapleigh, et al, acting thru their agents A. P. Coles and Bros., parties of the first part, and M. L. Cardona, party of second part, wherein the parties of the first part have employed the said party of the second part, who is a Mexican licensed surveyor, and lives in El Paso, to make a survey of some lands in Mexico, being approximately 127,000 acres, and known as the Rio Brava Survey, in Ojinaga, Mexico, including El Comedor lands. The party of the second part is to make this survey in accordance with the Ley Agraria, in the State of Chihuahua, Mexico, and in making this survey he is to comply with all requirements of the law in the State of Chihuahua, i. e., he is to establish metes and bounds of the property and the platting of the different classes of the land with their area expressed in hectares, and in such a way that the survey

will be satisfactory to the Government of the State of Chihuahua, Mexico.

The said Cardona agrees to make a trip to the City of Chihuahua at his own expense and secure from the Governor an extension of time sufficient to make the survey before beginning the work. Should he fail to get the extension of time then this contract is null and *c*oid, and the parties of the first part have no further obligations to the party of the second part. Should he Cardona do the work, he is to begin on or before March 10, 1923, and continuously pursue and in supervise the same until the survey and platting is completed, then he is to furnish maps and descriptions with satisfactory report; he further agrees to complete the work within 35 days from the 18th day of March 1923, and if possible to complete same in less time. The *prty* of the second part is to furnish everything, including supplies, transportation, outfit for him*slef* and surveying party at his own expense, and the parties of the first part agree to pay him $1500.00 for doing this work complete, including complete set of maps and field maps, the parties of first part *d*o have no other expense. If the said Cardona finds it advisable and necessary to make the survey in less time, than stated above, he is permitted to *comply* a*m*other licensed surveyor with a complete surveying outfit and to put the two surveying outfits at work surveying the lands at the same time, he being responsible for the correctness of the work done by the surveying party he employs, other than the surveying which he is making himself. That parties of the first part being anxious to complete the survey as quickly as possible prefer that the party of the second part have two surveying outfits in the field, ie,, one besides his own, but the party of the second part agrees to pay for the second surveying outfit, thereby cutting down the time, so that the time of *surveing* by one outfit would not ex-

ceed 35 days, but the party of the second part must furnish evidence that he has paid all of his employees before receiving final payment.

The party of the second part agrees to employ *t*other parties at as low price as possible for the purpose of erecting suitable monuments out of loose stones and to be whitewashed, and establish around entire *boundry,* of the lands, and he further agrees to employ sufficient number of men and women to carry on this work while the survey is being made and have it completed by the time the survey is completed. The parties of the first part agree to pay the extra reasonable amount for the building of these monuments. The said Cardona agrees to make this survey in such a manner so that his notes will show that the survey will be absolutely accurate, so that metes and bounds tie in together.

The parties of the first part have advanced to the said M. L. Cardona $500.00 on this work, the receipt of which is hereby acknowledged by said M. A. Cardona, and they agree to make a second payment, one-half of the balance, when the survey is completeed, and the balance when the survey is accepted by the Government of the State of Chihuahua.

The said Cardona agrees that should any part of this work be unsatisfactory to the Government of the State of Chihuahua, then he is to correct the same at his own expense without delay, even if it requires him to go on the ground and survey the lands again.

Witness our hands at El Paso, Texas, this the 2nd day of March, A. D. 1923.

Signed A. L. SHAPLEIGH et al
Signed A. P. COLES & BROS. Agts.
Signed M. L. CARDONA

WITNESS:

Signed C. F. SAUNDERS
Signed LENA PHILLIPS

Some time subsequent to the survey I was employed to make contracts with people who wanted to go to the land and cultivate it, the Agraristas or any other people that wanted to go to use the land. I attempted to carry out that employment. I did not succeed in interesting any renters or lessees. I talked to more than twenty different prospective lessees. I was not able to interest any of them because I had made a form of contract, and Mr. Haff and I don't know who of the lawyers didn't like the way it was written, so they wanted to change, and the time was passing and the people did not accept the new proposition, and that was the trouble. I found people who were willing to rent under the right terms, but I could not make them the right terms. I found some people who wanted to buy part of the land. I acted under the power of attorney in doing that work. I had power of attorney from different persons.

The work I was employed to do in the way of attempting to interest renters or lessees applied to all of the tracts of land of Shapleigh and associates, La Santisima, Vado de Piedra, San Antonio, and El Comedor. I surveyed all four of those tracts.

The Plaintiffs introduced in evidence the MAP identified by the witness Cardona, same being marked "P-28", and a photostatic copy thereof being as follows:

(Copy of map not included in this record, because of order of Court permitting original map to be sent up on appeal with record in this case).

Plaintiffs offered in evidence Power of Attorney executed by Margaret C. Lytle, et al, and Alfred L. Shap-

leigh, in favor of Manuel L. Cardona and Charles Davis; said document being marked "P-30", and being in words and figures as follows:

P. 30

ATTORNEY FELIPE SEIJAS
Notary Public Number 3

CERTIFIED COPY OF A DULY AUTHENTICATED POWER OF ATTORNEY EXECUTED BY MARGARET C. LYTLE AND CHARLES P. O'FALLON, THE FIRST IN HER CAPACITY AS HEIR TO THE INTESTATE ESTATE OF THOMAS RANKEN, JR. AND THE SECOND IN HIS CAPACITY AS HEIR TO THE INTESTATE ESTATE OF JOHN J. O'FALLON? AND ALFRED L. SHAPLEIGH IN HIS OWN NAME, IN FAVOR OF MANUEL L. CARDONA AND CHARLES DAVIS — — — — — — —

City of Juarez, Chihuahua, July 3rd, 1924.

Notarial Public Number 3
Attorney Felipe Seijas
City of Juarez
Chihuahua

(Nortarial Seal)

NUMBER EIGHT-HUNDRED SEVENTY-FIVE. 875 In the City of Juarez, District of Bravos, State of Chihuahua, on the 2nd day of July, 1924, I, FELIPE SEIJAS, Notary Public Number 3, in the exercise of my authority and in the presence of the witnesses whose names and civil status *her* hereinafter set forth, in compliance with an order dated the 24 of June of this year, issued by the Minor Judge acting as Judge of the Court of First Instance for Civil Cases in this District in a proceeding prosecuted before said Court wherein Manuel

L. Cardona asked for the proper authentication and certification of a power of attorney executed *ot* him and to Charles Davis jointly, in the ci*yt* of St. Louis, Missouri, United States of America, dated April 23rd of this year and signed by Margaret C. Lytle and Charles P. O'Fallon, the first in her capacity as heir to the *itestate* estate of Thomas Ranken, Jr., and the second as heir to the *itestate* estate of John J. O'Fallon, and by Alfred L. Shapleigh in his own name, I hereby protocolise and leave protocolized and aided to the *aooebdux,* if this *Nora4y's Blooks, n*arked as herein after Indecated, as "Exhibit A" and cont*ia*ning sixteen (16) pages including the order remitting the same which record is duly stamped and contains the prower of attorney which is the object of this protocolization or certification duly legalized in accordance with law in such manner as to be valid in this Republic. Added hereto and marked Exhibits B. and C, respectively, and duly filed in the appendix is the note returned from the Stamp Tax office authorizing the execution of said document and the receipt for the payment of taxes relative to said documents, wherein it appears that all taxes originally from the execution of this document and the certification thereof have been paid. Eduardo Madrid and Nicolas A. Flores were witnesses; the first is forty four years of age, with residence at number 105 Mejia Street; and the second is seventy three years of .ge, with residence at number 16 Constitucion Street, both married, property owners, residents of this city, qualified to testify and personally known to me, and after having read this document to them, they signed the same in m*a*y presence. To which I certify.

Notary Public Number 3

Attorney Felipe Seijas
City of Juarez,

Chihuahua.

Notsrial seal. E

Eduardo Madrid. Nicloss A. Flores, Felipe Seijas. Scrolls The record of the proceeding which is hereby certified is literally as follows:

Order Remitting the Record to this Office: Number 282 To Felipe Seijas, Notary Public Number 3, Present. In fourteen pages, I transmit herewith for your certification and authentication and the issuance of the respective copies, a record which was initiated and porsecuted as in this Court by Manuel Cardona, requesting you to please issue me the sudtomary receipt. With assurances of my attentive and distinguished consideration. Effective Suffrage. No ReElection. City of Juarex June 25th, 1924. First Minor Judge acting in the Civil Court of First Instance. F. P. Cilva. Scroll. To the Judge of the Civil Court of First Instance of this District. Present. Manuel L. Cardona, of age, Engineer, with office at number 1 in the Bull Park Building in this city, respectfully appears before your and alleges: That in ten original pages accompanied by a translation of the English into Spanish, I have the honor to annex hereto a public document being a power of attorney in favor of Charles Davis and the undersigned, executed by Margaret C. Lytle and Charles P. O'Fallon, the first in her capacity as heir to the intestate estate of Thomas Ranken, Jr., and the second as heir to the intestate estate of John J. O'Fallon and Alfred L. Shapleigh in his own name, which power of attorney was executed in the city of St. Louis Missouri, United States of America, on April 23rd of this year before the Notary Public T. I. Besson. The Power of attorney which I attach hereto duly complies with the requirements of Article 501 of the code of Civil Procedure in force in this State and the undersigned

being desirous of having the same duly authenticated and certified for legal purpose*w* in this Republic, respectfully prays that Court: That J. J. Flores, who resides at South Lerdo Avenue Number 9, in this city, be cited to appear for the purpose of ratifying and confirming the translation which he has made and that thereafter the record herein be sent to Notary Public Number 3 of this District, in charge of the attorney Felipe Seijas, in order that the same be duly authenticated and certified and that the proper copies be issued to the respective agents named therein. I affirm as required by law. City of *Jarez,* June 20, 1924, Scroll. Received June 24th of the present year, together with the documents to which reference is made. Let it appear of record. Corral Secretary. Scroll. City of Juarez, June 24th, 1924. Let Jose J. Flores be cited, he having made the translation which is attached to the petition herein, in order that he may ratify his signature placed at the foot thereof, and when he has ratified the same, let the original be transmitted to Felipe Seijas, Notary Public Number 3 in this District, for the proper authentication and certification and the issuance of the necessary testimony to the interested parties. Let notices issue. Ordered and signed by the Minor Judge, acting the Court of First Instance of the District of Bravos. To which I Certify. F. P. Silva. A. R. Corral. Secretary. Scrolls. On the 25th of June of the present year the Engineer Manuel L. Cardona was notified of the foregoing order and said that he took notice thereor, understood and signed the same. To which I certify. Manuel L. Cardona. Corral. Secretary. Scrools. City of Juarez, District of Bravos, State of Chihuahua. On the 25th of *a*June, 1924, being present in this court Mr. Jose J. Flores and having been duly sworn according to law and instructed as to the penalties for the violation of his oath, stated that

his name and civil status was as above set forth; that is, sixty-two years of age, married, property owner, native and resident of this city, with *he* residence at number 9 Sourth Lerdo Avenue, and being interrogated answered with respect to the pertinent matter as follows: That he ratifies in all its parts that translation which is shown to him as his own signature which appears at the foot thereof, the same being in his own handwriting and in the form and manner which he is accustomed to use in his business. Having been duly sworn, he ratified the same and signed it, together with the Judge and his Secretary. All of which is hereby Certified. F. P/ Silva. Jose J. Flores. A. R. Corral. Secretary. Scrolls. On the 25th of June of this year, in seven sheets (14) pages, let the originals of this present record be transmitted to the attorney Felipe Seijas for its authentication and certification as it has been ordered. Let it appear. Corral. Secretary. Scroll.

POWER OF ATTORNEY Know all men by these presents that the undersigned to-wit: Alfred L. Shapleigh in his own name, Mrs Margaret C. Lytle, in her capacity as heir to the *itestate* estate of Thomas Ranken, Jr., and Charles P. O'Fallon, in his capacity as heir to the *itestate* estate of John O'Fallon, have decided to appoint, and by these presents we do appoint, each one acting for himself, Manuel Cardona, a resident of the city of Juarez, State of Chihuahua. Mexico, Engineer, with office in the Bull Park Building Number 1, and Charles Davis of the city of El Paso, Texas, United States of America, as their a special attorney in fact, with ample power of representation, administration and as though they were the owners insofar as reference is made to properties, rights or interests, which we have or may have, in the Republic of Mexico and in such capacity and more

in particular with reference to the following properties: "SAN ANTONIO", "VADE DE PIEDRA", "EXCEDENCIAS O DEMASIAS DE VADE DE PIEDRA" and "EL COMEDOR", which were purchased from Bennett H. Davis jointly by Alfred L. Shapleigh, Thomas Ranken, Jr., John O'Fallon, Charles H. Peck, and Charles Davis, as appears from a deed of conveyance which was duly *authenicated an* certified in the city of Juarez, on the 30th of November, 1897, before Sostenes Rodriguez, A Notary Public, and also a portion of "LA SANTISIMA", purchased from said Bennett H. Davis, Jointly by Alfred L. Shapleigh, Thomas Ranken, Jr., and Charles H. Peck, as appears from a duly authenticated and certified deed of conveyance dated in the city of Juarez the 2nd of December, 1897, before Sostenes Rodriguez, Notary Public. Said Attorneys in face, Manuel L. Cardona and Charles Davis, shall have the following powers: 1. To admisister, settle account, issue subjects receipts and make payments, grante extensions and execute releases. 2. To appear before any authorities, either political or administrative, Federal, State or Municipal and prosecute, settle and agree upon all matters which they consider *covenient*. 3. To appear in any case or proceeding of voluntary jurisdiction whether contested or otherwise; to file and prosecute causes of action; agree to interlocutory decrees or judgments, pleas and appleas, including that of protection, either as plaintifss *defdnatns*, as third party, or in any other capacity; to file all kinds of suits, and prosecute or withdraw the same; to propoune and answer interrogatories; to make objections, with or without cause, to withdraw, to submit to the jurisdiction of a Court; to seek the adjudication of properties in payment of debts; to make and pay bids and to settle and compromise disputes. In any administration that may be initiated, or attorneys in face will accept or reject any

resolutions or court orders, appointments, accounts of administration, inventories, permits to sell or montgage properties and any plans for the division or partition of properties and they shall perform the duties of administrator, temporary or permanent, which each of us delegate to them through this solemn power of attorney. 4. to sell our rights of inheritance and to transfer any real estate or real rights which we may have as heirs of the above mentioned deceased and more specifically to convey to any company in exchange for stock therein, whether commercial, civil, a partnership, or stock company; or to lease them or rent them for shares. 5. To execute all kinds of documents either private or public, in the exercise of the powers conferred upon them therein. 6 To amend this power of attorney in whole or in part, one or more times and to revoke said amendments; to appoint special attorneys in fact or revoke said appointments one or more times. Mrs. Margaret C. Lytle executes this power of attorney with the consent of her husband, Thomas S. Lytle, who appears personally and ratifies and confirms the same in all its parts. Mrs. Mina W. Shapleigh, wife of Alfred L. Shapleigh, also appears at the execution of this power of attorney and gives her consent to the same and ratifies and confirms it insofar as it refers to any rights or interests which she has or may have in said properties as the wife of Alfred L. Shapleigh. Our civil status are as follows: Alfred L. Shapleigh, married, sixty-two years of age, merchant, resident of St. Louis, Missouri. Mina W. Shapleigh, married, fifty years *fo* age, residing with her husband, Mr. Shapleigh, in the City of St. Louis, Missouri. Margaret C. Lytle, married, sixty-one years of age, resideing with her husband in St. Louis, Missouri. Thomas S. Lytle, married, sixty-three years of age, capitalist, resident of St. Louis County. And Charles P. O'Fallon,

married, fifty-five years of age, capitalist, resident of St. Louis, County, Missouri. In witness whereof we have signed our names to this document, joined herein by our interpreter, Delbert J. Haff, in the City of St. Louis State of Missouri, United States of America, this 23rd day of April, 1924. Alfred L. Shapleigh. Mina Shapleigh. Margaret C. Lytle. Thomas S. Lytle. Charles P. O'Fallon. Delbert J. Haff, interpreter. Scrolls. City of St. Louis, State of Missouri. ss. In the city of St. Louis, State of Missouri, United States of America, on this 23rd day of April, 1924, before me a Notary Public, and the witnesses George Acton and Alvin E. Appel, both of age, employees, residents of this city and qualified to testify, personally appeared Alfred L. Shapleigh and wife, Mina W. Shapleigh; Margaret C. Lytle and husband Thomas S. Lytle, Charles P. O'Fallon and Delbert J. Haff, all personally known to me and all able to contract and obligate themselves, and the latter one also able to interpret; And all having been duly sworn and the foregoing instrument, together with its translation into English, having been read to them, they and each of the first five declared that they have signed said document as their free act and deed and the latter one of them declared that he has faithfully translated said document according to the best of his knowledge and understanding and that he has signed the same as interpreter. I, the Notary, Certify that I advised the persons executing this instrument that the same was executed in accordance with the laws of the State of Missouri; that it is an authentic document and, as such, requires full compliance with. In witness whereof I have signed my name and affixed my official seal on the day and place stated. George Acton, Witness. Alvin E. Appel, Witness. T. I. Beeson, Scroll, Notary Public. My Commission Expires October 7, 1926. A. seal which reads: T. I. Beeson, Notary Public, City of

St. Louis, Missouri. *TRANSLATION*: State of Missouri, City of St. Louis. I, John Shmoll, Clerk of the Circuit Court of the City of St. Louis, certify: that in the record in my office, which is authentic and entitled to full faith, it appears that T. I. Beeson is a Notary Public in and for said City and is duly commissioned and qualified to act as such. That her commission began October 8, 1922 and will expire October 7, 1926; that she qualifies as such on October 9, 1922, and that the laws of this State she is legally authorized as such Notary Public to take sworn statements, certify proofs and depositions, titles, transfers and powers and other written instru*emtns*. I further certify that I know her signature and veríly believe that the signature which appears at the foot of this instrument is her genuine signature. In testimony whereof I have signed my name and affixed the seal of said Court in my office in the City of St. Louis, this the 25th day of April, A. D. 1924. John Schmoll, Clerk of the Circuit Court, City of St. Louis. City of Juarez, June 10th, 1924. Jose J. Flores. A gold seal which reads: United Mexican States: Consulate at St. Louis, Missouri. Mexican Consular Service. The undersigned, Alfred Serratos, Mexican Consul in St. Louis, Missouri, certifies: That the foregoing signature is that of John Schmoll, Clerk of the Circuit Court, City of St. Louis, Missouri, and the same which he is accustomed to use in all the documents which he certifies, and, therefore is entitled to full faith and credit, St. Louis, Missouri. April 25, 1934. Alfredo Serratos. Mexican Consul. Scroll. "Note: This Consulate does not assume any responsibility." At the foot there are duly cancelled stamps for the sum of 55c. A gold seal which reads: United Mexican States. Mexico, D. F. Numbar 2095. The undersigned Secretary of Foreign Rela*tors,* certifies: That Alfredo Serratos Was Mexican

Consul in St. Louis, Missouri, on the 28th day of April, 1924, and the foregoing signature belongs to him. Mexico, May 9, 1924. P. Estrada. At the bottom, duly cancelled stamps *fo* the value of 11.00 pesos.

The Note which was returned by the Stamp Tax Office, literal*yty* reads as follows: To the Stamp Tax Collector. Present. With this date and under number 875, I have extended in the protocol in my charge, a document relative to the protocolization of a power of attorney executed in a foreign country by Margaret C. Lytle, Charles P. O'Fallon, and Alfred L. Shapleigh in favor of Manuel L. Cardona and Charles Davis. Said document is subject to pay $10.00 10% Public Debt, $1.00. Total $11.00, in accordance with Section 78 paragraph 1, of the Stamp Tariff Law and Decree of January 2nd, of the present year. With assurances of my attentive consideration. Effective Suffrage. No. Re*L*ection. City of Juarez, Chihuahua, July 2, 1924. Notary Public Number 3, Felipe Seijas, Scroll. Cancelled Stamps of the value of 11.00 pesos. The undersigned Stamp Tax Collector certified; That stamps have been attached to the present Note and duly cancelled, in the sum of 11.00 pesos, in accordance with the foregoing account rendered under the responsibility of the Notary signing the same. It appears of record in the respective Register at pages 10 and 11, under Number 175. City of Juarez, Chihuahua. July 2, 1924. For the Stamp Tax Collector, Daniel Briones, Deputy Stamp Tax Collector. The receipt from the Tax Collector's Office is as follows: Office Number 2, Certificate Number 1342. Tax Collector's Office. City of Juarez, Chihuahua. Manuel L. Cardona and Charles Davis have paid into this office the sum of 4.60, for tax to which they are subject according to the account on the margin hereof. July 2, 1924. The Collector, Daniel Solis. ACCOUNT: Execution of documents. Power of Attor-

ney executed in their favor by Margaret C. Ly*lte*, et als. 3.60. 25% Federal, 0.90 10% additional, 0.10. Total 4.60.

THIS IS A CERTIFIED COPY TAKEN FROM ITS ORIGINAL WHICH DULY COMPARED IS ISSUED IN FIVE SHEETS OF PAPER WITH THE CORRESPONDING STAMPS ATTACHED THERETO FOR THE ATTORNEYS IN FAC*E*, MANUEL L. CARDONA AND CHARLES DAVIS, AT ITS PLACE OF EXECUTION ON THIS 30 DAY OF JULY, 1924, HAVING FIRST TAKEN OFF THE PRINTED COPY REQUIRED BY LAW. TO WHICH I CERTIFY.

FELIPE SEIJAS.

(SEAL)

"Attorney Felipe Seijas
United Mexican States
Notary Public Number 3
City of Juarez, Chihuahua."

MANUEL L. CARDONA,

resumed the witness stand, and further testified as follows:

ON RECROSS EXAMINATION:

Referring to the stipulation in the contract with Mr. Shapleigh and others, acting through A. P. Coles & Brothers, agents, that the employment is to be contingent upon my obtaining from the authorities of the State of Chihuahua the necessary delay in order that the survey and other work could be done, I gave all the information to the lawyers to attend to that delay. I mean to Mr. Haff. Mr. Haff and I were working throughout as the agents and representatives of these parties, he as

lawyer and I as an engineer. The necessary delay was obtained, and I did go ahead with the work in accordance with the contract.

Mr. Shapleigh and his associates made the two additional payments to me as provided in the contract. They made me three payments of $500.00 each. I don't know whether the papers and all of the maps were ever received by the Government or not. In any event I was paid in accordance with the contract, which provides the third payment was after the Government accepted it.

The Charles Davis in this power of attorney is the late Mayor of the City of El Paso. In work done by me under those powers of attorney Mr. Haff was still acting as the legal adviser of Mr. Shapleigh and the other plaintiffs.

I made this survey in 1923 at the request of Mr. A. P. Coles. This map represents the survey I made at that time, and made this map from my original notes taken at that time. This map was drawn recently, just to show the position of the boundary of Rey Brothers with reference to the river in the present position. The river is approximately in the same position now, but the survey was made in accordance with field notes of the papers of Mr. Shapleigh, given to me by Mr. Haff. He sent me a certified copy of one of the deeds, but I don't remember what deed it was.

(Counsel read from deed from Bennett H. Davis to Thomas Ranken, Jr., Charles H. Peck and Alfred H. Shapleigh, being plaintiffs' exhibit No. 18). "Beginning at the upper river corner of said La Santisima Grant a stake from which the north corner of Presidio Viejo bears south 44 degrees 15 minutes west 3100 varas." That is the beginning point. The call is thence south 44 degrees 15 minutes west at 1475 varas cross a running

stream, 2910 varas edge of the valley, 4621 varas top of the toohills, 10000 varas to a pile of rock on a stony point. That represents the first line. Then south 35½ degrees east 5400 varas to a pile of rocks; thence south 45 degrees east 20800 varas to a pile of rocks in a ravine. I have got it south 55. I did that because Rey Brothers, the owners of the joining land, did not accept the position of the 45 degrees as they call in the deed, so I had to leave that line in accordance with their property. I made my survey in accordance with the line the Rey Brothers told me was the line, and not in accordance with the call of the field notes at that point.

Q Will you designate here on your map south 45 dedegrees east 20,800 varas and the point to where it would have brought you?

A It would come this way here (indicating).

Q Have you any way to make direct angulation of it, it would be approximately then that is marked in pencil on the map, which I will now ask you to designate, that pencil mark, as "X".

A (The witness marked as indicated by counsel).

COUNSEL FOR PLAINTIFFS: Just at this time we want it understood that was only approximations, and that Mr. Cardona, the witness, is unable to determine without proper instruments and perhaps a survey upon the ground as to anything more, from the questions that they are asking, than an approximation or estimate, and it is not to be considered as being an accurate description of the land, of the ground, and on that map as taken from the field notes.

THE COURT: The Court will overrule the exception, as it would appear that the objections urged

by counsel would be directed to the weight to be given the testimony and not the witness not be permitted to testify. He may be examined, and state what he is able to do, and what he is not able to do. That may be developed on examination. The Court will overrule the objection.

I have circled that point and have an "X" there by it. The next call from the field notes is thence south 22 degrees east 4320 varas cross a ravine, 12735 varas another, 15200 varas to a pile of rocks on the west slope of a hill.

Q If your prior line had been south 45 degrees east, and you had then proceeded your 15200 varas in the direction of south 29 degrees east, I will ask you to designate approximately the point to where you would have been, circle it, and mark that point "Y".

A (Witness complies).

The next call is thence south 50½ degrees east 12987 varas to a pile of rocks for lower southeast corner of the survey, and I have delineated that on my map following that course and distance.

(Witness marked a point "Z" on the map where it would have been if the call in the third line had been south 45 degrees east).

The call then reads thence north 40 degrees east 10000 varas to a stake on the bank of the Rio Grande River. My designation there on the map is as to the present Rio Grande. (Marked "A" with a circle).

Q Thence north 52½ degrees west 1640 varas, north 3½ degrees west 2060 varas, north 89 degrees west 1930 varas, north 18½ degrees west 1000 varas, north 46 degrees west 2780 varas, north 75½ degrees 3970 varas, north 10 degrees east 1540 varas, north 69 de-

grees west 925 varas, north 9 degrees east 1600 varas, north 32 degrees west 1510 varas, north 6½ degrees west 3150 varas, north 69 degrees west 812 varas, north 27½ degrees west 4100 varas, north 66½ degrees west 950 varas, north 7½ degrees west 1300 varas, west 1500 varas to a point opposite Fort Quitman, Texas, south 50 degrees west 630 varas, north 40 degrees west 2110 varas, north 27 degrees east 1900 varas, north 60 degrees west 1420 varas, south 85 degrees west 2920 varas, north 47 degrees west 5870 varas, north 17 degrees west 2830 varas. You have now passed the point on your map that you have designated as Banco El Guayuco, have you not?

A Yes, sir.

Q Now then on your map will you delineate approximately where the point from whence you proceeded north 80 degrees 0 minutes west 1420 varas would have been had you made you third call south 45 degrees east 20800 varas instead of south 55 degrees 20800 varas?

A Here (Indicating).

COUNSEL FOR PLAINTIFFS: We object to that as not being in keeping with the survey as made on the ground.

The objection was overruled and plaintiffs excepted.

When I was in the field making the survey I called to the owners of the adjoining land to show me the lines and don't have any trouble with them, so they showed me. I have this line in this direction according to the field notes. We will call this No. 3 (a point was marked "2.x"). When I was in No. 3 I had direction of this line, and the owners of the land were opposed to run the line in that

direction, and then they show me the direction of the line, instead of 45 degrees I found it was 55. I think it was a mistake in the writing of that description the same as this is a mistake in the mark of this southeast corner. It is very easy when you write field notes especially the stenographers to make mistakes in regard to the numbers. Instead of being 55 they write 45, because with this direction I came the right distance and the right calls to the river that this mark in the deeds as the end of this line, and otherwise I could not reach the river, and the river is, Los Cajoncitas is a very prominent point, it is not changed, the river, at that place, it is all rock bottom, and no changes, so I believe they wrote those field notes they made a mistake, instead of writing 55 they wrote 45.

The point I have designated as "B" is approximately where my line would have run had I made the call south 45 degrees east on my third call instead of south 55 degrees east. If I had made the call south 45 degrees east instead of south 55 degrees east my line would not have passed through the property here in question at all. In the field notes as called there is not a call for Los Cajoncitas; it is just to the river.

It is a matter of common knowledge this river changes from one side of the valley to the other. The land in this case is caused by an avulsive change in the river changing it from Mexico to the United States, changing about 1,500 meters.

I know there was a great flood of the Rio Grande in 1897, but I didn't see it because I wasn't there.

(Witness temporarily excused).

A. P. COLES

was thereupon recalled by plaintiffs, and further testified:

ON REDIRECT EXAMINATION:

I wanted to make a correction in my testimony. In regard to the value of the land, if I remember correctly I put it somewhere between $50.00 and $100.00. I think that is too high. I don't think that land is worth that much down there now. There was a time when that valuation probably would have been right, and cultivated land down there got up pretty high, but I think around $25.00 an acre would be, more or less would be nearer the value of that land. I don't think it would go up so high. I don't know there is any material difference, but I don't like to make a mistake.

(Witness excused).

MANUEL L. CARDONA

resumed the witness stand, and further testified:

ON RECROSS EXAMINATION:

If I had followed the original field notes as given in the deed the line would have been below the line involved in this suit, and in Mexico.

The last call you gave me was north 47 degrees west 5870 varas. The next call is north 17 degrees west 2830 varas, next south 79 degrees west 1000 varas, and next is north 10 degrees east 1580 varas. I have delineated that call as north 80 degrees west the same number of varas. There are so many marks on the river in that place at that time, it was water in this part of the river, was the reason why I followed that part of the river different to the deeds. I did not have any actual knowledge of the river of 1897. There was water in the river here in 1923. I followed the water in the river. If I change this direction I am sure the map would never close, because I have the

direction the other way. If I had followed the original field notes it would never close. If I had followed the field notes correctly my line, from the point given in the call north 10 degrees east 1580 varas, would have been north of the line that I have delineated on my map in red.

ON REDIRECT EXAMINATION:

From the field notes furnished me I located the starting point from the Presidio Viejo. That is a natural object on the ground, very well marked there. When I found the beginning point I had one line south 44 degrees 15 minutes west for 8380 meters. I made the survey in meters and not varas. (Marked No. 2). I did not find a well established located corner there. From No. 2 as indicated on the map then I ran south 33 degrees 30 minutes east 4545 meters. There was a call in the field notes for a corner, and I found that corner. It was a pile of rocks. According to the Brothers Rey that was recogized as one of the corners of La Santisima. They were the owners of the land adjoining, and they were with me and they showed me the points, and that corresponded with the field notes as furnished me. I locate that corner as No. 3. From that point I ran south 55 degrees east for 17430 meters to another pile of rocks on the ground, which I designate No. 4. The Brothers Rey told me it was one point of their property, meeting point of the property. Running the course and distance as I did run it south 55 degrees east 17430 meters I found monument No. 4 on the ground. I did not run any course and distance south 45 degrees east 17430 varas. I did not run that course as shown in the field notes because the Rey Brothers told me in that direction I was within their property. I found by running south 55 degrees a distance of 17430 meters I established on the ground the corner they pointed out to me.

I next ran south 29 degrees east 12737 meters to another

pile of rocks (marked No. 5). That was in accordance with the field notes that run from monument 4 to monument 5, and they checked on the ground. Between those monuments there are some other smaller monuments that I found on the ground.

I next run south 50 degrees 30 minutes east 11883 meters, and had to find that point because it was not mentioned, no marks at that point, and I established a monument there. (Marked 6).

I next run north 40 degrees east 8380 meters to the river. That was in accordance with the field notes; the field notes call for the river. I found that the course and distance corresponded with the field notes in making that call from 6 to the point on the river. (Marked 7). These red lines on my map indicate the river bed as it existed in 1923, and the red lines for the entire survey indicate the line as I ran it in 1923. I did not follow the river meter by meter but took an approximation of it according to the field notes when I found the river as you see here (marked 8). I found the river there, then followed the description of the deed to 9. There was wet marks of the river at this point here, the old river bed. Then I followed the description of the deed and found the river in the regular channel as shown by the field notes at that point 10 on the map. Then I followed the old river bed to points marked 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and at point 25 I found the new river. That was a little to the west of the course and distance called for in the field notes, but approximately the same from 25 to 26, following the regular channel of the river, to 27, 28, 29, and at 29 was shown an old river bed. Then to 30, old river bed, then to 31. This next is my call for 80 degrees west north 8 minutes, and that was an old river bed, wet, and varied the field note call. The field notes call for north 46 degrees west

instead of north 80 degrees. I did that because I had to use my judgment on the lines because I found no river bed in that direction. In following that course I found the old river bed from 31 to 32. I followed the old river bed instead of the course and distance as given by the field notes because I didn't find any trace of the river bed following that direction. I followed the river bed in making my survey. From 32 to 33 I found too many river beds in that part of the ground, and I followed the direction that called by the field notes. By following the river bed between 31 and 32 would put me back in line of the other calls from 32 according to the field notes as given in the deed. Between 32 and 33 I found too many marks of old river beds, and I followed the field notes, course and distance. I found on that run as to course and distance marks and formations which would indicate that the river had formerly run in that direction. From 33 to 34 I was in the new river bed, which new river bed corresponded with the call as to course and distance as given in the deed. From there I ran to point 35, as marked on the map, in accordance with the field notes that I had. A part of that line was in the new river bed and part was in the old river bed. Then I ran to 36 and found the old river bed on the ground. From there to 37, and I found part of the new river and part of the old river. From 37 to 38, north 15 degrees east 1768 meters, 2110 varas, I found the old river bed, and that corresponded with the call as to course and distance. From 38 to 39, north 45 degrees west 402 meters, 480 varas, to the starting point. By running that line as I did, following the natural objects I found on the ground, the survey tied at the corner of beginning. From the point of beginning to that point designated B. P., Presidio Viejo, I crossed the river at about 1,000 meters. the total distance from the

point of beginning to the point indicated as B. P. is 2592.8 meters.

From the survey I made on the ground of La Santisima land, as described in that deed, I would say that the Banco Guayuco was located within that survey.

By following the survey as I actually made it, from Point 3 to Point 4, as shown on the map, south 55 degrees east 17430 varas, I found an established monument on the ground. By following that course and distance to that monument, running it from point 3 to point 4, I found that all other courses and distance calls corresponded with the field notes in the deed, save and except the point from 31 to 32 of the call in the field notes, and as to that I did not follow the call for course and distance, but I followed the river bed. By surveying that I find that commencing at the beginning point I could tie the La Santisima survey by making the point of beginning and the point of ending closed.

ON RECROSS EXAMINATION:

I found a mound or rock at point No. 3 indicated on my map. It was from that point I made the run that I did at the request of the Rey Brothers.

I found a mound of rock at point 4. I did not run the other course to see whether or not there was a mound or *cok* at the point I have marked on my map "X"; I did not run the line south 45 degrees east, and I don't know whether there was a mound of rock there.

That country is on top of the hills. There is a well established mound or rocks at point 4. That is very near to the arroya, on the side of the hill. The mound of rocks I found at that point was on the side of the arroya. I do not know who put that mound of rock I found there.

From point 7 back to point No. 1, or point 39, I followed either the river bed or the old river bed in a general fashion. Cajoncitas starts between 7 and 8, and I followed the river in 1923 from point 7 to 8. This curving black line between 7 and 8 is the river, and I think it is the river today too. That is below the red line running from 7 to 8. It is another branch of the river. The main river runs south of that.

The points you have just enumerated practically surround the Guayuco Banco. From 25 to 26 and from 26 to 27 I followed the old river bed. From 27 to 28 I followed the channel of the river, with the water running in 1923.

I know where Dave Gill's house is, but I can't mark it on the map. There are some kind of hills there along the Guayuco Banco, but I cannot mark them here on the map. I remember a bluff 30 or 40 feet high above the river at the upper part of the Guayuco Banco; there was a sharp drop-off to the river.

I remember where Findley is, a station on the Southern pacific about seventy miles from El Paso, and this land is situated about southwest from Findley. From those bluffs at the top of where the river ran on the Guayuco Banco, top point of the Guayuco Banco, the land continually rises and becomes higher from that point until it reaches Findley on the Southern Pacific, about ten miles east.

I followed the river bed north and east of the El Guayuco Banco when I made that survey.

When I made that survey I made it by triangulation; I did not follow exactly the bed of the river. I followed it as close as possible, but I did not follow it absolutely. By triangulation I mean you make surveys without chaining it, run by an instrument. I made all of that survey from points 25 to 28 by triangulation without actually

chaining it myself or with the help of chainmen. I remember there were high lands over there, just as sharp a drop-off as the wall of this room.

Q From that point on north or northeast the river never did run, did it?

A That is the reason why I made all of those things by triangulation, because I couldn't chain that, I had to take the high points.

As I remember I followed the old river bed from 25 to 28, but I remember those high lands too. There was no indication the river ever had or could have flowed up that hill.

From points 30 to 33 is an old channel of the river. At the present time I can show you all of the indications of the river bed. At the present time the river is approximately two and a half miles south of that. From point 7 to point 39 I continuously followed the river bed or an old river bed. It is over twenty miles between those points. In 1923 there was on the ground a continuous river bed or old river bed, channel, for a space of more than twenty miles.

A recess was then taken at 12:10 o'clock P. M., until 9:30 o'clock A. M., Wednesday, October 31, 1934, at which time proceedings were resumed:

MANUEL L. CARDONA

resumed the witness stand, and further testified:

ON REDIRECT EXAMINATION:

In the field notes which I had in making the survey it called for the Rey Brothers lands. I think there were about six monuments I found from point 3 to point 4. That is the line Rey Brothers told me was their line.

ON RECROSS EXAMINATION:

The deed from Macmanus to Davis has: "Continuing south 43 degrees east 12486 meters bordering in the full extent of the lands above described with lands of the Rey Brothers." I cannot find anywhere in this deed a call running south 55 degrees east. If I had followed the original field notes which called for the land of the Rey Brothers I would have run myself south of the line or a point south and west of the point where I would have arrived at had I followed the call south 45 degrees. If I had followed the original field notes, which called for the Rey Brothers, I would have ended up at a point further south and west, or a point lower on my map, than I would if I had followed the field notes in the deed from Davis to Shapleigh. When I made this survey I did not follow those field notes. I never made a survey following the field notes in the deed from Macmanus to Davis. The instrument which I used and from which I drew this map nowhere calls for the Rey Brothers lands, but it is regular practice in surveying to look for the owners of the adjacent lands and see the lines and boundaries. It is a general surveying practice to take a man's lines as he says they were. If they are in accordance with the field notes I think they will be much better; if not we have to study and see who is in the right lines. If there are marks in the field you follow the marks on the field. If you do not find any marks on the field then you follow the notes you have in the field notes.

One vara on this map I have drawn is equal to 25,000 varas of the land, or one meter is equal to 25,000 meters. The calls here are for Mexican varas, which is shorter than the Texas vara. It is about 33 inches.

Jose Munoz Salas and Mr. Romero assisted me in making that survey.

The field notes which I followed when I made the survey in 1923 are the field notes shown in plaintiffs' exhibit No. 18. I never followed on the ground the field notes as used in the confirmation deed from Macmanus to Davis. I did not make any survey on other field notes.

In surveying if you have a point perfectly marked it is much better to start at that point. I did not establish point 2 by triangulation. I started at this point of Presidio Viejo, and then used estadia, the same as chained it. I definitely established point No. 2 both from marks and the relation it bears to the Navajo and Armagosa Mountains.

Coming back from my point known as No. 2 10,000 varas I am practically right down on the river instead of away up beyond the river. This line I have drawn on that map is half an inch too long, which should throw all of the other lines in the northern boundary where I triangulated down that much. My northern lines, lines up above the river, along the present river, are half an inch too high.

If I take the original field notes in the deed from Bennett Davis to Shapleigh and others and run those field notes just as they are called for they will not meet.

I couldn't follow the field notes from the deed from Macmanus to Bennett Davis because I found some changes in the field. I used the field notes in the deed made by Sostenes Rodriguez, plaintiffs' Exhibit No. 18.

I made one survey, according to the field notes used in the deed from Bennett Davis to Shapleigh and associates. In making that survey I twice departed from the calls in the field notes.

Point No. 2 on the map is correct, and if it is correct the lines, say from point 25 on, would necessarily be correspondingly lower if I had correctly delineated upon the map. I think the lines would close, taking the calls

as I found them. The other mistake has to be some place; maybe when I made the drawing I made one angle longer or something like that. The map is a correct representation of the survey I made in 1923 as far as it can be. There is a mistake in the distance from point 2 to 39. This map is made only to illustrate the survey I made in 1923.

This map you show me is a blue print of another map. This is my signature in the lower right hand corner. The writing in the lower right hand corner is all my writing. This map was made in the office to show to the lawyers approximately the location of the land, and is an office copy made by me in June of the same year that I made my survey on the ground. I made this map with some field notes that Mr. Haff sent me just on a plain piece of paper, so I don't know what kind of field notes they are. This map was just to show Mr. Haff approximately the position of the lands, according to the field notes that I had, so they could illustrate this in the way to make partition of the lands. It was not made from a survey of the land on the ground at that time. I got my river line on the map from the notes I had at that time. This map shows that my lines come in below the river at every single point. This map as to course and distance does not correspond with the field notes called for in the deed from Macmanus to Davis.

I got the field notes from which I drew this map from Mr. Haff, and he sent me the field notes afterwards from which I made the actual survey on the ground, because I told him I didn't know if those field notes were correct or not.

It took me about nine weeks to make the survey. The map I made in the office was made before I made the survey on the ground. This map is dated June. That is the date I sent it to him. When I made the actual sur-

vey I had two sets of field notes, and used only one of them.

Defendant introduced the map identified by the witness, same being marked "D-1", but is not included in this record, because of order of Court permitting original map to be sent up with this record on appeal.

The survey shown on this map will close. I am sure the survey I made closes. It does not close in the drawing because it was not drawed with enough care.

The dotted line on this map shows a road. That is not called for in the field notes, and all of those things are imaginary, the road is imaginary, because we knew there was a road there. When I made the survey I made on the ground I did not show the road because I made this map to illustrate the top here and the position of the river with reference to the boundary of Santisima. I indicate on this map the presence of old Fort Quitman, and I located it there just because we knew it was some place there. I don't think I have correctly indicated it.

Slightly northwest from the ruins of Presidio Viejo I represent on that map a jacal laying north of the road. I don't know if it is there or not. I put it there without any knowledge of whether it was there or not. I represent on this map a settlement of Vado Cedillos. I knew there was a settlement with the name Vado Cedillos, because I was there before, but I don't know if it was correctly represented or not, but I just put it because I wanted to show the owners more or less the position of the lands. This was made with the purpose of subdividing the line.

This map which is Plaintiffs' Exhibit No. 28 was made in August, 1933.

ON REDIRECT EXAMINATION:

The short lines deliniated on map marked "D-1" between the southerly line of the survey and the Rio Grande River means some lomas or hills, imaginary topography of the ground.

ON RECROSS EXAMINATION:

The broken line on this map, with circles and dashes, marked "D1" represents the dividing line between *argi*-cultural lands and hills. I told you before I made all of those things just by memory. When I drew this plat it had been about a month that I had seen the ground. I was on the ground before I drew that, but not making a survey. I was just looking on the field because before we make any survey we go to the ground and see how it was. I made this plan in my office before I took any survey.

ON REDIRECT EXAMINATION:

These lines intervening, the boundaries, as shown on this blue print map, "D-1", indicates my topographical vision of the terrain, my vision of the mountains and the arroyas and the character of the ground. I did not make a survey on the ground to indicate the topography of that map. The original of this blue print was made before I made a survey of the ground, and the map which is marked plaintiffs' exhibit 28 was a survey that I actually made on the ground.

This map, exhibit 28, was made just to illustrate, and I am sure if you made calculations of the courses and distances of the land it closes absolutely. The field notes close as I made them on the ground. If this shows half an inch greater distance from the point on this exhibit 28 from 39 to 2 it is an inaccurary as to the scale, because there are so many corners that every little difference in the point of the pencil at the end makes a big

difference. In scaling this map it shows a larger distance than it ought to be. On the ground there were no discrepancies. Disregarding the inaccuracy as to the scale on the map the survey actually closed on the ground as I made it.

Referring to Exhibit "D-1" we tried to sell or rent those lands to different people, and for that reason we wanted to have it subdivided, and I sent that map to Mr. Haff in order that he could give me any suggestions about subdivision according to the owners of the land. Ulnus means owners. That is not a survey made on the ground, but is a rough map for the purpose of giving Mr. Haff and the owners of the ground a vision so they could tell me how they wanted to subdivide it.

ON RECROSS EXAMINATION:

Plaintiffs' exhibit 28 is rough in the drawing, but it is regular. It is not a very accurate map drawn to scale. The length of the lines are not absolutely correct. The courses on map 28 are correct as possible. Before we made the drawing we made some calculations, and according to the calculations it closes on the ground. There is some little difference in all courses and distances, it accumulates, and at the end it results in a difference. There is a discrepancy in the map of about half an inch; there are 40 lines, and I had to divide that difference of the half an inch between the 40 lines, and in relation with the length of each line, and every single line of that map is wrong, it has to be, it is impossible to make it absolutely correct.

ON REDIRECT EXAMINATION:

The survey I made on the ground is absolutely correct. When I put on the paper every little difference in the point of the pencil it makes a larger difference, and of

course it is no objection in general to the maps except they are needed for some very, very special purposes.

Exhibit 28 shows the relative position of the Guayuco Banco with relation to the boundary of La Santisima.

ON RECROSS EXAMINATION:

The line on exhibit 28 from B. P. to point 39 is obsolutely correct. On this map from B. P. to point 2 is not correct. On the ground it is absolutely correct.

(Witness excused).

GILBERTO VALENZUELA,

a witness for plaintiffs, was recalled, and further testified:

ON REDIRECT EXAMINATION:

If the recordation of the deed from Bennett H. Davis to Shapleigh, Ranken and Peck, dated April 13, 1897, occurred after the passage of the Agrarian Law, if the recordation was otherwise correct, it would not constitute any defect in the instrument as a muniment of title. I have already stated the Agrarian Law does not affect, and cannot affect, the validity of the deed, because the Agrarian Law has been enacted without jurisdiction. The Agrarian Law does not affect, and cannot affect, in any way the validity of the deed, because, according to Article 14 of the Federal Constitution of Mexico any law cannot be applied retroactively against any person, and in this case the Agrarian Law does not affect a contract executed in 1897. The prescription of Article 53 of the Agrarian Law does not affect and does not refer in any way to any contract executed before the promulgation of the Agrarian Law. The translation of this article is as fol-

lows: Article 53. Any transfer of dominion of land that should be executed since the promulgation of this law, or in virtue of said law, shall be notified to the executive power of the state, to that purpose the interested party in each given case shall advise of the case to the Secretary of the State, including a map and the necessary data for the identity of the property matter of the contract. To this effect a notary public shall not authorize any instrument referring to said transfer of properties without the proof of the Secretary of State has taken notice of the act. In the same circumstances the official in charge of the public registry of the property shall not describe any title of said transfer of property if the respective instrument does not show the notification or advice above stated. By the letter of the text of this prescription it appears clearly that the Agrarian Law, in Article 53, makes reference only and exclusively to any transfer of dominion of land that should be executed since or after promulgation of the Agrarian Law.

In the present case the transfer of dominion of the land has been executed in 1897, not after promulgation of the Agrarian Law. The second paragraph of Article 53 makes reference to said transfer, which transfer shall have been executed after the Agrarian Law, and all of the rest of the article makes reference only to and exclusively to property transferred after the Agrarian Law, and consequently does not refer in any way to the contract of 1898, and consequently cannot affect in any way either the validity of the contract or the validity of the registration. The conclusion is that contract and registration are legal, and authority of the States makes the validity or registration of the contract legal.

The Code establishes the elements that are necessary for the validity of a sale, and these elements are capacity of the contracting parties, consent, the object of the

contract must be legal, and the external formalities established by the law. It is necessary to have consent. Article 1403 of the old Code of the State of Chihuahua establishes the manifestation of the consent shall be made by words, by writing or by facts that make necessary to presume said consent. By this you will see the consent can be words, it is not necessary to make any writing in any case, that consent shall be made by facts that can be presumed. It is unnecessary to express in detail. It depends on the kind of the contract. From the moment there is a seller, a buyer, a thing, a price, the consent is implied, consequently in the case of Bennett the consent is expressed in the contract because we have the four elements for the contract, the seller, the buyer, the thing, and the price, and the consent has been shown in this contract according to the form and law in which the law of Texas proves this consent, according to Article 12 of the Civil Code, external formalities of the contract. This contract was executed with the formality here and the consent here must be shown in the contract according to the practice and law of Texas, and this is perfectly fulfilled here. For all of this I consider the contract is absolutely legal and absolutely valid.

Prescription runs against the Government in Mexico, by statute. We find first in the Code of 1870 of the Federal District this prescription, Article 1184: The Union, the States in their cases, as well as municipalities and all public establishments or moral persons shall be considered particular persons in regard to the prescription of properties, rights or actions that can be susceptible of private ownership, like the case of the land, from the moment that the Government has made sale of the land. This is Article 1184 of the Civil Code of 1870 of the Federal District that was adopted by the State of Chihuahua in 1882. The actual Code of the State of

Chihuahua has the same prescription in this way: "The State, the municipalities, all public establishments and all moral persons shall be considered a particular person in regard to the properties, rights or actions that are susceptible of private property." We find the same prescription in the Civil Code of 1884, Article 1076: "The Union, the District, and California, the States and the municipalities and all public establishments, and companies or corporations (moral persons) shall be considered particular persons in regard to the prescription of the properties, rights and actions, that are susceptible of private property." The Code which has been promulgated in the Federal District the 30th day of August, 1928, has this same prescription.

I have examined all of the documents that have been offered in evidence on the trial of the case. In my opinion this title is perfectly legal and valid, the negative prescription and positive prescription. The negative prescription is this way in Mexico. We have the prescriptions as a way or means to acquire the property, of a thing, by means of possession, or the prescription as a way or means to be free of obligation or by the lapsing of time, established by the law. In this case the title of Shapleigh, Ranken and Peck are favored by the two prescriptions, the negative prescription in this way: We have seen that according to Article 1788 of the Civil Code that was in force in Chihuahua from 1882 to 1898, the action and the acceptance of nullity correspond to the parties and grantees of a contract. This action has all the rights, are subject to prescription, and this action is not exercised within the term of twenty years are lost for the parties in this contract. In the first place it is to the parties to the contract, second, this action is lost just for the lapsing of twenty years from the date of the contract, consequently the titles of Shapleigh and asso-

ciates, just by the fact that twenty years have elapsed from 1897 to 1917 without any party to the contract having exercised any action to nullify this contract, and in this way the negative prescriptions favor the muniments of title of Shapleigh and associates. The old Code and the new Code of the State of Chihuahua establishes and sanctions prescriptions as a way or means to acquire property. To this purpose is essential the possession of the thing ten years according to the new code. Twenty years possession was necessary according to the old Code. Article 2 of the new one establishes that the time that has elapsed before the enacting of the new Code shall be counted according to the old Code. In this case it will be less than ten years in the new Code. To this purpose it is necessary to have possession. Possession as a means or way to acquire property can be with good faith or with bad faith. With good faith is possession that is based in a title that is enough to transfer the dominion, or that is considered in good faith enough to transfer dominion. As in this case the possession of the land is based on the delivery of the land by Bennett H. Davis to Shapleigh and associates, according to the sale executed in 1897, execution is good faith because it is based on just title, and the possession shall have the requisites, must be public, pacific, uninterrupted possession. Pacific possession must start without violence. In this case by selling of the property. Public possession is possession where anybody interested in, interested parties of the contract, has opportunity to attack, going to court and demanding possession; and continuous possession is possession that has not been impeached or by any action before the court.

For all of these reasons the titles that Shapleigh and associates already have after the execution, the sale of Bennett H. Davis to Shapleigh, has been stated by pre-

scription, and the prescription itself constitutes a new title of ownership, prescription of property, of the land, they have not only the ten years established by the law to have ownership in good faith, they have twenty-eight years of possession of the law from 1897 to 1925, in which they lost possession by the act of the Government. With twenty-seven or twenty-eight years possession in this condition they have acquired possession of the land with good faith or with bad faith, because with bad faith need just twenty years. The Articles of the new Code on which this is based are Articles 919, 921, 925, 926, 927, 928, 929, 930, 962; the corresponding Articles of the old Code are 826, 827, 828, 832, 833, 834, 835, 836 and 837. The articles pertaining to the prescription in the old Code are 1165, 1166, 1168, 1178, 1187, 1188, 1190, 1191, 1192, 1193, 1194, 1195 and 1200. Prescriptions, according to the new Code: Articles 1065, 1066, 1068, 1078, 1085, 1086, 1088, 1089, 1090, 1091, 1092, 1093 and 1097.

The prescriptions have favored the muniments of title of plaintiffs in two ways, by negative prescription in the way they have been free from exercise of any action of any right from the parties in the contract by which they get the property of the land. In positive prescription by possession of twenty-seven years, and this is new muniment of title in favor of Shapleigh and associates. I think plaintiffs have established title by prescription as well as by record, according to Mexican law.

The book you show me, on the fly leaf of which is stated: "The Civil Code of the Federal District and Territory of Lower California, adopted in the State of Chihuahua by decree of the Legislature on the 23rd of November, 1882" is generally regarded as the official copy of the old Code. This book described as the Civil Code of the free and sovereign State of Chihuahua, first official edition, Chihuahua Government Printing House, 1898, is

generally regarded as the official copy of the Civil Code of the State of Chihuahua, Mexico, effective from 1898 to date. This Code made reference to the old one in Article 2 Transitory.

COUNSEL FOR PLAINTIFFS: Plaintiffs offer in evidence the original Spanish and the English translation of Articles 1, 14, 16, 27, 117, 133, of the Federal Constitution of Mexico of 1857 and 1917. Also original Spanish and English translation of the following articles of what is known as the Old Civil Code of the State of Chihuahua, Mexico: 7, 13, 14, 15, (919 to 962), 1165 to 1244), 1388, 1392, 1395, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1427, 1439, 1535, 1536, 1546, 1769, 1788, 517, 1200, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 2939, 2946, 2959, 2965, 2983, 2984, 2985, 2996, 2997, 3332. Also following Articles in what is known as the New Civil Code of the State of Chihuahua, Mexico: 5, 10, 11, 12, 735, 736, (826 to 868), (1065 to 1138), (1139 to 1156), 1163, 1177, 1286, 1287, 1303, 1524, 1533, 1534, 1535, 1536, 1546, 1547, 1548, 1549, 2676, 2683, 2687, 2688, 2702, 2703, 2717, 2718, 2719, 2730, 2731, 2733, 3088. Also we are offering in evidence the two books which the witness identified.

ON RECROSS EXAMINATION:

Article 15 of the old Code reads substantially as follows: "With regard to the form or external solemnities of contracts, wills, and every public instrument, the law of the countries in which they shall have been executed shall govern. Nevertheless, residents of Chihuahua, foreigners or residents of other States resident outside of Chihuahua, are at liberty to subject themselves to the laws and formalities prescribed by the Chihuahua law.

In those cases in which the act has to be put into execution within the territory of the State." That appears in the first chapter of the old Code, under preliminary title; in other words, of the law and its effects, with general rules for its application.

Article 1395 of the Code which was in effect in 1897 reads substantially as follows: "In order that a contract should be valid it must have the following conditions: I, capacity of the contracting parties; II, mutual consent; and, III, licit or legal object." That is a specific statute.

Article 14 of the old Code reads: "In regard to real estate (property) located in the State it will be ruled by the Mexican law, even in the case it shall be possessed by foreigners." Even if foreigners own it Mexican law governs. And the Mexican law on contracts, which is a specific law, says it shall show those three things, capacity, mutual consent, and the object be legal.

I said that the objection made to the confirmation deed of Mr. Macmanus to Bennett Davis was not sound for two reasons, first, that in my opinion the Agrarian Law of the State of Chihuahua had not been constitutionally adopted, and, second, because of the terms of the Agrarian Law it was not applicable to instruments which had been executed prior to the passage of the Agrarian Law.

Any transfer of title executed subsequent to the passage of the Agrarian Law, provided it were constitutional, would not be valid unless an application was made to the State authorities first for permission to do it. The Agrarian Law was promulgated on May 25, 1922. The confirmation deed from Macmanus to Bennett Davis was executed in 1924, but the confirmation is not the transfering. These acts are absolutely different. The ratification of the deed from Macmanus to Davis was executed

more than a year after the promulgation of the Agrarian Law.

(Witness excused).

PLAINTIFFS RESTED.

COUNSEL FOR DEFENDANT: The defendant at this time moves for judgment, particularly as to the plaintiffs other than A. L. Shapleigh, since none of them have been shown to have any right, title or interest in or to the premises or the lands in this suit.

THE COURT: Very well. Proceed, and the Court will reserve the ruling.

DEFENDANT'S TESTIMONY.

* * * *

COUNSEL FOR DEFENDANT: You will recall that the agreement between counsel was that the instruments in either abstract could be read in evidence, subject to the same objections that could be made to the original instruments, if offered in evidence, and I call the Court's attention to the fact we adopted, and don't care to burden the Court by again reading, except to direct attention of the Court to the Minute of the Boundary Commission, heretofore offered in evidence and admitted, and the report of the engineers which accompanied Minute 121, and also the International Boundary Commission map of El Guayuco Banco No. 319, though without repeating them, simply refer to them as being relied upon by us also.

Defendant offered in evidence Executive Decree of the Government of the State of Chihuahua, dated March 5, 1925.

COUNSEL FOR PLAINTIFFS: Your Honor, the plaintiffs object to Defendant's Exhibit No. 2, being English copy of the so-called Expropriation Decree of the Government of Chihuahua, signed on the 5th of March, 1925, for a number of reasons; first, we think that the Expropriation Decree is null and void and of no effect, for the reason that it is contrary to the principles of International Law. I think this expropriation decree is nothing more than an exercise, attempted exercise on the part of the State of Chihuahua of the right of eminent domain, and under the well settled principles of International Law the exercise of eminent domain must be accom-

panied by indemnity, and this decree shows on its face it was not accompanied by indemnity. And, second, the expropriation decree is null and of no effect for the reason it violates the treaty between the United States and Mexico of September 8, 1923, which provides substantially that when either country takes the property of a national of the other country, that upon demand made for restitution of the property there shall also be a finding of the value of the property, and the country against which the finding is made may pay for the property instead of restoring it, but the payment shall be immediate, and this expropriation decree shows on its face that the payment was not immediate.

Then the expropriation decree was null and void, and of no effect, because in violation of the Constitution of 1917, Art. 14, which provides that no person shall be deprived of his property without due process of law instituted before a duly created court. Of course, the Governor of the State of Chihuahua was no kind of court.

Fourth, the expropriation decree is null and void and of no effect because in violation of the Mexican Constitution of 1917, Art. 16, which provides in effect that no person shall be molested or disturbed in his possession of property without due notice and an opportunity to be heard.

The expropriation decree was null and void and of no force or effect because in violation of Art. 27 of the Mexican Constitution of 1917, which says that private property shall not be expropriated except for reasons of public utility, and by means of indemnification, and in this case there was no indemnification. And in this connection we invoke the

provisions of both Constitutions, 1858 and 1917, because there is a slight difference in them.

The expropriation decree was null and void and of no effect because in violation of the provisions of the Agrarian Law of the State of Chihuahua, which provides that, for the expropriation of estates exceeding 40,000 hectares, and for the expropriation only of the excess above 40,000 hectares, and in this case the evidence shows that La Santisima had a superficial area of less than 40,000 hectares, and was therefore not subject to expropriation.

And the expropriation decree was null and void and of no effect for the reason that it was based on the Agrarian Law which itself is unconstitutional because not sanctioned by any Federal Law, that is there has been no authority granted by any Federal Law for the creation of an agrarian debt.

And the expropriation decree was null and void and of no force or effect because in violation of Sec. 736 of the current Civil Code of Chihuahua, which is pretty much like one of the provisions of the Constitution, and provides that no person can be deprived of his property or disturbed in the possession of his property without previous indemnification.

I add this further objection, that under the 1917 Constitution there is a provision for the several states to pass an agrarian law, but that before there could be passed any agrarian law by any State that there should be first enacted a Federal law authorizing such States to pass agrarian laws in terms with the enactment of the Federal Law, and that such—that no such Congressional or Federal Law has ever

been passed by any act of the Federal Congress of the Republic of Mexico authorizing the agrarian law under which the defendants are claiming a title. Therefore the agrarian law of the State of Chihuahua under which the Governor of the State of Chihuahua was seeking to expropriate this property was unconstitutional and therefore void.

The document was marked "D-2", and is in words and figures as follows:

D 2.

LOCAL GOVERNMENT.
Executive Power.

DECREE.

Upon consideration of the memorial that Senor Eligio de la Torre, as manager of the Association of Railroadmen of the Bravo, an Agricultural and Industrial Cooperative Society of Unlimited Liability, presented to the Government of the State on the 12th day of November of the past year, 1924, and in which he denounced the existence of a latifundium* that extends, along the banks of the Rio Bravo, in the districts of Bravos and Morelos of this State of Chihuahua, municipalities of Guadalupe, San Ignacio and Ojinaga, from Presidio Viejo to Cajoncitos, in one part, and in another, from the ruins of Presidio de Pilares to the estate known as Angostura, or Buenavista, district of Morelos, municipality of Ojinage, the two parts of latifundium being separated, one from the other, by a tract of land belonging to La Santisima,

*A great landed estate: in Mexican law—an excessive landed estate, i. e. an area of land greater than the laws of the nation and the state will allow one person to own.

which is the property of Edward Morris; with a breach of two leagues at La Santisima, less in some places and greater in others, with a total area of 90,000 hectares, slightly more or less, an area composed by the tracts of San Antonio, Vade de Piedra, Demasias de Vado de Piedra, El Comedor or Agua de Martin, and the part of La Santisima that is embraced between Presidio viejo and Cajoncitos; lands of which Messrs. Thomas Ranken, Jr., Charles H. Peck, Alfred L. Shapleigh, Charles Davis and John O'Fallon appear to be the owners;

And upon consideration also of the records of these proceedings, and of the report of the Office of the Secretary General; and

Finding, I.—That the land denounced as a latifundium by the Assoviation of Railroad men of the Bravo, an Agricultural and Industrial Cooperative Society of Unlimited Liability, is, in fact, a latifu*m*dium, and it so appears from the testimony of the implied agents of those who say they are the owners of those lands; for Attorney Delbert J. Haff in a letter in the English language which he addressed to General Enriquez, Governo*w* of this State, on the first day of March, 1923, states that La Santisima measures 79,408 hectares; that Vado de Piedra contains 18,866 hectares; that Demasias de Vado de Piedra has an area of 1,310 hectares; that San Antonio contains 14,044 hectares, 88 ares; and El Comedor 10,000 hectares, numbers that give a total of 123,650 hectares, 88 ares. And Attorney Don Antonio Horcasitas in his memorial of the 4th day of June, 1923, states that Vado de Piedra has an area of 23,243 h., 38 a., 48 centiares; San Antonio 15,681 h. 37 ares, 32 centiares; El Comedor 10,000 h., *e*hich make the sum of 48,924 h., 75 a., 80 c. a., but in that memorial Attorney Horcasitas refers only to three of the estates, leaving two of them out, La Santisi-

ma, which according to the plat made by Engineer Don Manuel L. Cardona and exhibited by Attorney Horcasitas with his writing of July 17, 1923, measures 39,469 h., 80 a., and the so-called Demasias de Vado de Piedra, which, according to the statement of Attorney Hall, as appears in this same finding, contains 1,310 h., numbers which, added to the foregoing sum amount to 89,704 h., 55 a., 80 c. a., wherefore, it is evident that the estate that has been denounced is, in fact, a latifundium, and its owners are embraced in the obligation established by article 3 of the Agrarian Law of the State.

Finding, II.—That (in regard to the formation of that latifundium and to the acquisition, by those who now appear as its owners, of the tracts of land that compose it), in the deed of purchase and sale of the tract of land celled El Comedor, whose exemplification in three sheets appears in this file at pages 27 to 29, and which was executed in favor of Mr. *Bennedett* H. Davis by Mr. Arcadio Spencer, in the town of Paso del Norte, on the 25th day of March, 1887, before Notary Public Ignacio C. Ocadiz, in the name of Messrs. Matilde Rodriguez, Francisco Sanchez and Francisco Flores, the representative of Mr. Davis, G. T. Newman, declared that Mr. Bennett H. Davis had a concession to acquire real estate within the zone of twenty leagues on the northern frontier, and that said concession had been granted to him by the Government of Mexico in 1886; a concession which, he said, he did not exhibit, because of not having found it among his papers, but offered to present it afterwards so that its existence might be noted on the margin of the deed and at the foot of its exemplification by the same notarial office; a notation that does not appear of the foot of the exemplification, nor does it appear to have been made on the margin of the deed.

Finding, III.—That in another deed executed at El Paso, Texas, on the 13th day of February, 1897, before H. R. Wood, notary public, and protocolized in Ciudad Juarez on November 30, 1897, by the Notary Public, Don Sostenes Rodriguez, it appears that Mr. Bennett H. Davis sold to the Rio Bravo Land and Cattle Company the tracts of land called San Antonio, Vado de Piedra and El Comedor, and that, because of the stockholders of that company's not having a permit from the Mexican Government to acquire the legal title to such lands, said title was conveyed to Mr. Bennett H. Davis, as a stockholder of said company, in the capacity of trustee, for the other stockholders, of the respective share to which each of them should be entitled; and it appears also that in an instrument drawn on May 12, 1887, before Notary Poblic W. B. McLaclen, Mr. Davis acknowledged said trust and obligated himself to convey the said lands at any time to the owners; and he therefore conveyed to Messrs. John J. O'Fallon, Thomas Rankin, Alfred L. Shapleigh, Charles Davis and Charles H. Peck the several parts of said lands that are set forth in the document, and at the end of the exemplification thereof it appears that Mr. Charles Davis was *adivsed* by the notary that he should attach to the deed the permit that the General Government had granted to him and the rest of the purchasers to acquire the lands referred to in the contract, and also that he should record the deed in the Public Register of Property.

Finding, IV.—That in the exemplification of said deed, protocolized by the Notary Sostenes Rodriguez, which runs from sheets 23 to 26 of this record, it does not appeat that the said permit has been added thereto, nor that it has been recorded in the Public Registry of Property; and that, granting the lack of those proofs, it is to

be considered as certain that the purchasers, Messr. O'-Fallon, Rankin, Shapleigh, Davis (Chas.) and Peck have not had a permit from the Government of Mexico to enable them to acquire the lands that, it appears, were sold to them by Mr. Bennett H. Davis.

Finding, V.—That with regard to La Santisima there is no record of its acquisition in any writing that appears in this file; but the fact, that in the several memorials and letters, as well as in the plat of that tract which was filed, all of which will be discussed in subsequent findings herein, the La Santisima is mentioned as one of the tracts belonging to those who were represented by the implied agents, Attorneys Elordy, Haff and Horcasitas, shows that that tract also forms a part of the latifundium that has been denounced.

Finding, VI.—That, according to what appears from the deeds mentioned in findings II, III and IV, Messrs. Ranken, O'Fallon, Shapleigh, Peck and Davis (Chas) lacked the necessary permit to own real estate within the zone of twenty leagues along the frontier, and although Attorney Antonio Horcasitas, as the implied agent of those who appear as owners of the latifundium, stated in his memorial of the 8th day of June, 1923, that his principals had a special permit from the Mexican Government for that acquisition, that statement was not proved in any manner.

Finding, VII.—That with regard to the sale made by Mr. Bennett Davis of the San Antonio, Vado de Piedra and El Comedor tracts to the Rio Bravo Land and Cattle Company, which sale is mentioned in finding III herein, Attorney Antonio Horcasitas in his memorial of June 8, 1923, stated that his principals offered to rescind that contract of sale in order to dissolve the partnership and *devvde* the properties among themselves so as to abide

by the provisions of the Agrarian law; but it is not shown in the record that the said rescission was carried into effect.

Finding, VIII.—That, the Agrarian Law of the State of Chihuahua having been promulgated on the 25th day of May, 1922, Attorneys Aquiles Elorduy and Delbert J. Haff addressed the Governor of this state by telegram of November 24 of the same year (1922), as the implied agents of Messrs. Alfred L. Shapleigh and associates, owners of the aforesaid lands situate in the districts of Bravos and Morelos, and, based on transitory article 1 of said law, requested an extension of six months' time, alleging that it being that the owners were aliens and that they were without the country, it had been impossicle for them to comply seasonably with the Agrarian law; to which request the Government of the State acceded by telegram of the 25th day of the same month, granting an extension of ninety days in which to form the project for dividing the latifundium into fractions.

Finding, IX.—That the request made by telegraph was reproduced in a memorial of the 25th day of the same month, filed by the said implied agents who therein represented themselves to be such agents, of Messrs. Alfred L. Shapleigh, of Saint Louis, Missouri, Charles Davis, of El Paso, Texas, and associates; and the Government of the State, by official communication of the 7th day of December, 1922, denied that extension, by two days afterwards, on the 9th., in official communication of the day, granted it, to the end that within the term of ninety days the said owners should present the project for the division of their properties into fractions.

Finding, X.—That on February 23, of the following year, 1923, Engineer Don Manuel Cardona, by letter addressed to Engineer Ingnacio C. Enriquez, Governor of

the State, Stated to him that it was impossible to comply, within the term granted, with the provisions of the law; and it is to be noted that in that letter Engineer Cardona refers to the properties of the Rio Bravo Land and Cattle Company, and that in a letter dated February 23, 1923, and in telegram of March 2 of the same year, also addressed to the Governor of the State, Mr. Charles Davis, reproduced the same request.

Finding XI.—That the Engineer, Chief of the Division of Agriculture, to whom the letter of Mr. Cardona was transmitted for procedure, made answer, in official communication of March 5, 1923, that no proceedings had been instituted relative to the properties of the Rio Bravo Land and Cattle Company, and requested him to explain the matter, by indicating the properties of the said Company for whose division he requested an extension of forty-five days' time; and it does not appear that such explanation was ever made by Eng. Cardona.

Finding, XII.—That Attorney Delbert J. Haff on the 1st day of March of the same year, 1923, addressed an extensive letter in English to General Don Ignacio C. Enriquez, Governor of the State, in which he recommended and supported the petition for a new extension of time in which to prepare the project of dividing the lands of the said Messrs. Shapleigh and associates, who, in said letter, appear to be Messrs. Charles Peck and David Ranken; a petition which he said was to be prepared by Attorney Don Horcasitas.

Finding, XIII.—That on the 5th day of the same month of March, 1923, Attorney Antonio Horcasitas as agent, also implied, of Mr. Alfred L. Shapleigh, of Saint Louis, Missouri, Carlos Peck, of El Paso, Texas, and associates, joint owners, according to his statement, of the tracts of La Santisima, situated in the District of Bravos, and

of those known as Vado de Piedra, Demasias de Vado de Piedra, San Antonio and El Comedor, or Aguą de Martin, situated in the District of Morales, formerly Iturbide, requested a new extension of six months, alleging the impossibility of carrying out the work (in the time given); to which petition the office of the Secretary of the Government, by order of the Citizen Governor, in an official communication of March 10, 1923, made answer that a further extension of sixty days was granted, for the presentation of the project of dividing the lands of which the said gentlemen were owners.

Finding, XIV.—That in official communication of March 14 of the same year, 1923, the extension of sixty days was communicated to Mr. Chas. Davis, as an answer to a telegram from him of the 2nd day of the same March, and a letter of his of the 23rd of February of the same year; which letter and message appear in these proceedings.

Finding, XV.—That on the 15th day of May, 1923, the said Attorney, Don Antonio Horcasitas, addressed a letter to the Governor, General Don Ignacio C. Enriquez, stating that during his absence from Chihuahua the plats of the lands of A. L. Shapleigh had arrived at his offices, and that the plat of La Santisima was lacking, and that, therefore, he requested another short extension for the rest of the land, for the purpose that upon his return to Chihuahua he should present those plats to the Government.

Finding, XVI.—That Attorney Antonio Horcasitas, in a writing of the 4th day of June, 1923, as implied agent of Messrs. Thomas Ranken, Jr., Charles H. Peck and Alfred L. Shapleigh, presented the plats of the Vado de Piedra, San Antonio and El Comedor tracts, of which those gentlemen are, according to his statement, the own-

ers in joint and undivided estate, and he submitted therewith in the form of a certified copy, a title-deed which he said was the latest conveyance of dominion, and stating that the said gentlemen are the owners also of the tract of land called La Santisima, whose plat they are preparing and would present upon completion of the work; and he added that he referred to the article 3 of the Agrarian Law, because the areas of all those tracts of land, being added, exceed the portion that article 1 of the said law permits one person to possess, but he called attention to the fact that there were three owners, and that they had not made among themselves the division that would put them amply within the terms of the aforesaid law; which division they had not been able to make because the local agrarian commission had formed a project for the bestowal of commons upon three new towns called Vado de Piedra, Barranco de Guadalupe and San Antonio, and although his principals were not disposed to abide by that provision, it, nevertheless, while it subsisted, impeded the co-owners from arriving at an agreement on the division of the joint property, because that bestowal of commons put all of the Vado de Piedra lands in the hands of strangers; all of which the Government should take into consideration in determining whether the owneres were embraced in the provision of article 3 of the agrarian law. And he concluded by remarking that the matter of sub-division among the co-owners, impeded at the time by the decision of the local agrarian commission, was not subject to the agrarian law, but, rather, to private agreements among the owners.

Finding, XVII.—That, to that memorial the Government of the State made answer in official communication of June 5, that according to prior records that appear in the office of the Secretary of the Government, the said

properties, as well as the La Santisima property, belonged to the Rio Bravo Land and Cattle Company, and that the total area of the properties was 128,354 hectares, 75 ares and 70 centiares; and area that constituted a latifundium, and that since those properties constituted a latifundium, and since the Government had, on the 9th day of December, 1922, granted and extension of ninety days, and on the 10th day of May, 1923, another of sixty, it was evident that the porperties should be divided into fractions in accordance with the provisions of the agrarian law, and, therefore, it expected that in the shortest possible time a project of division be presented to the Eexecutive of the State, together with the certified copies of the title-deeds to the aforesaid lands, because there had been exhibited only two copies of the deeds of El Comedor and one copy of the articles of incorporation of the Rio Bravo Land and Cattle Company of which copies those of the title deeds to El Comedor appear in the files, but the copy of the articles of incorporation of the Rio Bravo Land and Cattle Company was abstracted from them with no relative record thereof remaining.

Finding, XVIII.—That on the 8th day of the same June, said attorney Horcasitas presented a memorial stating that Messrs. Ranken, Peck and Shapleigh had a special permit from the Government to acquire real estate, and, that if they had incorporated the said company, that had occurred before the enactment of the agrarian law; that they were willing to sub-divide the properties, and were waiting only on the final result of the order of the agrarian commission, which had deprived the owners of almost the whole of Vado de Piedra, and he ended by requesting the reconsideration of the order with the understanding that the said gentlemen were willing to rescind the contract of the Rio Bravo Land and Cattle Company

and to dissolve the joint ownership by dividing those properties among themselves.

Finding, XIX.—That, on July 17, of the same year Attorney Horcasitas presented another memorial, exhibiting copy and blueprints of the La Santisima tract, and stating that the Government ought to rectify its affirmation that, according to prior records appearing in the files of the Secretary's Office, and the said tracts of Vado de Piedra, San Antonio, El Comedor and La Santisima belonged to the Rio Bravo Land and Cattle Company, because those properties belong, in common and in undivided estate, to the aforesaid Messrs. Ranken, Peck and Shapleigh, and that, once they have divided the land among themselves, the properties will no longer constitute a latifundium, and he concluded requesting that a special declaration of this be made by the Government for its legal effects.

Finding, XX.—That, to that request the Government of the State made answer in official communication of the 1st day of August, that in regard to the La Santisima property there had been found a difference of 39,960 hectares, 19 ares and 92 centiares, less in the plat of Eng. Cardona as compared with the report of Attorney Haff; and reminded the petitioner that in official communication of June 5, previous, he had been requested to send to the office of the Government's Secretary, for its consideration, the project for dividing the said property into fractions, together with certified copies of the titles, so that the proper study thereof and decision thereon could be made; and with respect to whether the properties belonged to an association or were the joint property of several co-owners, he was told that the interested parties should prove one thing or the other; and the communication concluded calling attention to the

fact that the plats showed no project of division into fractions not of division among the co-owners, and that, therefore, the peitioner's presentation of the project for the division would be appreciated, in order that the Division of Agriculture could make the proper study thereof.

Finding, XXI.—That, from the records in the proceedings, set forth in findings VIII, IX, XII, XIV, XV, and XVI, it appears that on the 25th day of November, 1922, the owners of the latifundium were granted an extension of ninety days, and on March 10, 1923, another sixty days; so that, for the purpose of complying with the obligation of presenting the project for the dividing the latifundium into fractions, its owners have had, besides the term of six months, two other terms which together amount to five more months, and that within those extensions they did not comply with that obligation.

Finding, XXII.—That, the only thing done by the implied agents of the owners of the latifundium was to present plats of the tracts known as Vado de Piedra, San Antonio, El Comedor and La Santisima, it appearing that the plat of the latter is not wholly exact according to the records mentioned in finding XIII.

Finding XXXIII.—That, in the supposition that the ownership of the latifundium denounced is not in Messrs. Ranken, Shapleigh and associates, but in the Rio Bravo Land and Cattle Company, neither has the company complied with the obligations imposed by article 3 of the agrari*na* law; for it does not appear in the proceedings that it has done anything in that regard, not even analogous to those things that were attempted by Messrs. Ranken, Shapleigh and associates; and,

Conclusion, I.—That the property whose expropriation,

for the purose of its division into fractions and sale, has been petitioned by the Ferrocarrileros del Bravo, Sociedad Cooperativa Agricola e Industrial de Responsabilidad Ilinitada, is a true latifundium, according to express affirmations of the implied agents of the owners, Messrs. O'Fallon, Ranken, Shapleigh, Davis (Charles) and Peck:

Conclusion, II.—That, although Mr. Bennett H. Davis through his representative, Mr. Newman, averred, at the time the title-deed (referred to in the 2nd finding herein) was executed to him by Mr. Arcadio Spencer, that he had a grant to acquire real estate within the 20-league zone of the northern frontier, the permit was never presented; for it does not appear that a notation to that effect was entered on the margin of the deed, nor at the end of its exemplified copy, as was therein stated would be done as soon as it should be presented; but that, even considering that existence of such permit as true, it, by its personal and nontransferable character, could not authorize the purchasers to acquire the properties sold, because, snice they were foreigners, it was necessary that they have permission, personal also, for that acquisition.

Conclusion, III.—That in the deed to the San Antonio, Vado de Piedra and El Comedor properties, mentioned in finding three, it appears that the purchasers, Thomas Ranken, Alfred L. Shapleigh, Charles H. Peck, John J. O'Fallon and Charles Davis did not have a permit from the Government to acquire real estate within the zone of twenty leagues of the frontier, and that although the implied agent of the said gentlemen, Attorney Don Antonio Horcasitas, asserted in his memorial of June 8, 1923, that his principals had permission from the Government for the acquisition of real estate within the aforesaid zone, nevertheless those permits do not appear in

the record, and therefore their existence is not to be considered as a true fact.

Conclusion IV.—That it does not appear in the record with complete clarity whether the ownership of the latifundium is in Messrs. Ranken, Peck and associates, or in the Rio Bravo Land and Cattle Company, but, whoever the owners may be, either the first named parties or the aforesaid company, and laying aside the questions relative to whether the acquisition of those lands was made according to law, and in whom their ownership really lies, there is no room for doubt of the fact that they compose a true latifundium, and, therefore, those who appear as owners thereof were subject to the provisions of the agrarian law, and very especially to that of its article 3, which lays upon the owners of latifundia the duty to formulate and submit, within the term of six *monts*, the project for the division of their lands into fractions, under the terms of the same article.

Conclusion V.—That Messrs. Shapleigh and associates obtained from the Government of the State first an extension of ninety days and then another of sixty, as has already been shown, and allowed the periods of those extensions to pass without complying with the obligation that the aforesaid articles 3 of the agrarian law imposes; for the most they did was to present some plats of those lands, as has been set forth in finding 12.

Conclusion VI.—That the obligation to divide the lands into fractions is provided not only by the said article 3 of the agrarian law of the State, but also by subsection (b) of section 7 of article 27 of the Constitution, and that according to subsection (c) of the said section 7 of that article 27, " * * * if the owner should refuse to made the division, this shall be carried out by the local government through the medium of expropriation," and,

according to article 6 of the agrarian law, "* * * * by the mere fact that the owners do not present the plats in the form and terms of article 3 (of the same law) it shall be understood that they refuse to make the division, and the executive shall carry it out, by means of expropriation, in accordance to subsection (c) of section 7 of article 27 of the Federal Constitution," and that, by virtue of those presepts it is to be understood that the owners of the latifundium to which the denouncement refers, (which) is the) subject matter of these proceedings, *hve* refused to divide the same into fractions, which obligation is imposed upon them by the legislation of the Republic; and that, therefore, the Executive of this State has not only the power but also the obligation to expropriate, of their latifundium, the owners who have shown themselves to be intractable to the division and alienation of the same.

For these reasons of fact and of law it should be, and it is, decreed:

First: Messrs. Thomas Ranken, Jr., Charles H. Peck, Alfred L. Shapleigh, Charles Davis and John J. O'Fallon, if they should be the owners, or the Rio Bravo Land and Cattle Company if the*y* ownership is in it, are hereby dispossessed of the latifundium situated on the right margin of the Rio Bravo in the State of Chihuahua, District of Bravos and Morales, Municipalities of Guadalupe, San Ignacio and Ojinage, a latifundium composed by the part of the tract of land called La Santisima between Presidio Viejo and Cajonsitos, and by the San Antonio, Vado de Piedra, Demasias de Vado de Piedra and El Comedor or Agua de Martin tracts of land, which lie between Presidio de Pilares and Buena Vista or Angostura; the area of the latifundium being (89,704 h. 55 a. 80 c. s.,) eighty-nine thousand seven hundred and four

hectares, fifty-five ares and eighty centiares; with the understanding that the said latifundium is expropriated even though its area be more or less than that which has been stated.

Second: Proceed to the survey and division into fractions of the lands that compose said latifundium, for the purpose of alienating them in favor of Mexicans in lawful terms; observe, if the case should arise, the provisions that relative to rights of preference are set forth by articles 7 and 51 of the local agrarian law.

Third: Indemnify the owners in the terms of subsection (d) of section 7 of article 27 of the Federal Constitution; and, once the agrarian debt of the State has been created according to subsection (e) of the same section, deliver to them the corresponding bonds, for the purpose of guaranteeing the payment of the value of the expropriated latifundium.

Fourth: Notify: and for that effect publish this decree in the official newspaper of the State, so that it may provide the legal effects.

It was so ordered and signed by the Citizen Governor of the State, on the 5th day of March, 1925.

J. A. ALMEIDA.

By authorization of the Secretary-General.

The Chief Clerk.
L. E. ESTRADA.

* * * *

I, J. N. Phillips, hereby certify that the foregoing on thirteen and one-third pages is, according to the best of my knowledge and ability, a true and correct translation into English of its original in the Spanish Language that appears beginning on page 2, through pages, 3, 4, and 5,

and ending on page 6, of the attached copy of the Official Newspaper of the Government of the State of Chihuahua, dated Saturday, March 7, 1925.

Duplicate

(Signed) J. N. PHILLIPS
Translator.

El Paso, Texas,
May 2, 1933.

Defendant introduced in evidence application of Pascual C. Mier to purchase a portion of the La Santisima latifundium.

COUNSEL FOR PLAINTIFFS: This seems to be a petition on the part of the defendant for an award of land, filed March 14, 1925, nine days after the date of the expropriation proceedings, and further we say that this exhibit is irrelevant and immaterial and wholly without probative value for any purpose since the rights of the defendant, if any, would be shown by his deed, and that a petition would be ineffective to vest in him, or initiate in him rights of any character, and of course it does not constitute a muniment of title.

COUNSEL FOR DEFENDANT: The Court is reserving ruling, and does not desire any argument on it at this time?

THE COURT: Reserving ruling.

The document was marked "D-5", and is in words and figures as follows:

D 5

A Seal:
"Free and Soverign
State of Chihuahua
United States of
Mexico.
(The national emblem)"

Citizen Prof, Manuel Lopez Davila, Secretary General of the Government, CERTIFIES

That in record No. 130-S-A., instituted under date of March 14, 1925, by the then Division of Agriculture and Promotion, now Division of Agriculture and Livestock, subordinate to this General Secretariate of the Government, there appears a document which, in its exact words, says: Mr. Governor of the State: (1.) Pascual Carlos Mier, before you respectfully represent: That in the Official Organ of the number corresponding to the 17th day of the current month, there was published a decree of the 5th which expropriates the latifundium situate on the right bank of the Rio Grande, Municipalities of Guadalupe, San Ignacio and Ojinaga, formed by a part of the La Santisima tract, and by the lands of San Antonio, Vado de Piedras, Demasias de Vado de Piedra and El Comedor or Agua de Martin, of which Messrs. Thomas Ranken, Jr., Charles H. Peck, Alfred L. Shapleig, Charles Davis and John J. O'Fallon, appear to be the owners.

According to what may be inferred from the terms of the published decree, the expropriation of the latifundium to which I refer has been made because of the fact that owners, whoever they may be, have not complied with the requirements of article 3 of the agrarian law. and, therefore, they are dispossessed in accordance with article 6 of the same (law).

Such being the case, it is not possible, for the acquisition of lands comprised within the latifundium, to deal with the owners, who, being aliens and not residing in the country, according to information that I have acquired, do not have in their stead representatives in the Republic. Moreover, the provisions of the agrarian law in its part entitled "Of Procedure," articles 38 to 50, cannot be applied when the landholders take the position of resistence to the division and alienation of their lands, foreseen by subsection (c) of section VII, of article 27 of the Constitution and by article 6 of the agrarian law of the State, because they suppose the fact that the landholders themselves be the ones to fractionize their lands; which state of affairs, making it impossible for me to deal with the owners to acquire a part of the expropriated lands, obliges me to address myself to the Government, to the end that, after the survey and division of the latifundium have been made I may be considered by whomsover it may concern as an applicant for the part of the land that I wish to acquire, it being that part which extends along the right bank of the Rio Grande, and has as a northeast boundary a line that, beginning at the place known by the name of Arroyo del Cuervo and passing by Fort Quitman runs to the point known as Cajoncitos; and I desire to acquire that part of the land with a width that, within the quantities fixed by article 1 of the agrarian law, the extension towards the southwest of the La-Santisima tract will permit, in the part of it that appertains to Messrs. Ranken and associates.

I further represent that for the better success of my application, and as a means of facilitating the survey and division, in what respects the land that I am applying for, I offer, at my expense, that a competent engineer of legal title fix the boundaries and make the survey and

classification of the lands within the perimeter of the tract that I wish to acquire.

For the purpose of acquiring the portion of the latifundium which I have designated, and that, when the division and alienation of the lands be made, I may be considered, with respect to that which I have designated, to be the first applicant therefor, for such rights as the law may give, I pray that you deign to order the setting up of a special record relative to this my application, and open it with this present writing. I designate (as my address) for the receipt of notices: Avenida Juarez, No. 7, Sauer Building, Post-office box 35. Ciudad Juarez.

I declare my attentiye consideration and respect.

Effective Suffrage. No Reelection.

Ciudad Juarez, Chih., March 14, 1925.

(Signed) P. C. MIER.

These presents, duly compared, are issued at the request of the interested party, in the City of Chihuahua, on the 29th day of the month of October, 1934.

(Signed) Illegible
PROF. MANUEL LOPEZ DAVILA.

A seal:
"Secretariate of the
Government of the State
Chihuahua."

I, J. N. Phillips, hereby certify that the foregoing on two and one half pages is, to the best of my knowledge and ability, a true and correct translation into English of its original in the Spanish language which is hereto attached.

El Paso, Texas (Signed) J. N. PHILLIPS
October 23, 1934. Translator.

Defendant introduced in evidence communication of the authorities of the State of Chihuahua receiving and filing application next above introduced; plaintiffs urged the same objections urged to the expropriation decree, and further that the instrument does not constitute a muniment of title, has no probative value, and could not vest or initiate in the defendant any rights. Said document being marked "D-7", and being in words and figures as follows:

D 7

A seal:
"Free and Soverign
State of Chihuahua.
United States of
Mexico. (The national
emblem.)"

EXECUTIVE POWER.

Secretariate General.
Division of Agriculture
No. 100-B.

To the Citizen Pascual C. Mier,
P. O. Box #35
Ciudad Juarez,
Chih.

With reference to your courteous writing of March 14, last past, I advise you by order of the Governor that due note has been made of the application presented by you for the acquisition of a fraction of the latifundium ex-

propriated from Messrs. Shapleig and Associates, situate on the bank of the Rio Bravo del Norte, in the Districts of Bravos and Morelos of this State, which fraction is located from the point known by the name of "Arroyo del Cuervo", down stream to the point known as "Cajoncitos", with the (same) width as the "La Santisima" tract has at that place, and according to the topographic description that appears in the plot that you saw fit to attach to the application.

In accordance with articles 30, 50 and 61 of the Local Agrarian Law, observation is made that, since the area classified in the attached plot as of semi-irrigation exceeds the maximum fixed by the law for this class (of land) by 350 hectares, this excess shall remain subject to the provisions of the aforesaid articles.

Said application is admitted, and the respective record is set up in the Division of Agriculture of this Secretariate, and the same shall be determined when the division of said latifundium be made by the Executive of the State in accordance with the expropriation decree relative thereto.

I assure you of my attentive consideration.

Effective Suffrage. No Reelection.

Chihuahua, April 15, 1925.

By order of the Secretary General of the Government.

(Signed) L. E. ESTRADA.
Chief Clerk.

I, J. N. Phillips, hereby certify that the foregoing on one and a fraction pages is, to the best of my knowledge and ability, a true and correct translation into English of its original in the Spanish language which is hereto attached.

(Signed) J. N. PHILLIPS
Translator

El Paso, Texas
October 23, 1934

Defendant offered in evidence private deed of transfer of two lots of land, executed by Mr. Francisco R. Almada, Constitutional Governor, in favor of Mr. Pascual Carlos Mier, Chihuahua, February 20th, 1930.

COUNSEL FOR PLAINTIFFS: Your Honor, plaintiffs object to defendant's Exhibit 9, being the purported deed from the Governor of Chihuahua to Pascual Mier, dated February 20, 1930, for all the reasons which have been urged against the so-called expropriation decree and the other exhibits offered in evidence by the defendant; and for the further reason that the land in controversy under the uncontradicted evidence passed from Mexico to the United States some time in 1926, so that of the date of the purported deed, February 20, 1930, the land in controversy had been in the United States almost four years, and Mexico was wholly without jurisdiction to transfer the land or to do anything which would affect the land in any way. I do not want to make an argument, your Honor, but I want to make my point full. Any rights that the Governor of Chihuahua would have in executing a deed he gained under the Agrarian Law, and any act of his in carrying out the provisions of the Agrarian Law would be a public act and could not have been in his private capacity, and since the land had passed out of his jurisdiction he was wholly without authority of any kind whatever to execute a deed, or to do any act that would affect the title to the land in controversy. The exhibit offered is repugnant to the provisions of the Mexican Constitution of 1917, partic-

ularly Art. 121, and particularly sub-sections 1 and 2, which are very brief, and I shall read them. (Counsel read same).

We also object to this deed for the reason that it does not describe any property that is susceptible of location on the earth's surface. It begins with bound No. 1 and continues from bound No. 1 to 2, and so on, and it does not give the location of bound No. 1, or any other bound with regard to any reference point, and it does not give latitude or longitude of any bound, and does not locate any bound by any natural object, and it is therefore not susceptible of being located on the earth's surface, and the description is therefore inadequate and conveys nothing. I believe that is all, your Honor.

The document in question, marked "D-9", is in words and figures as follows:

D 9

THE STATE OF TEXAS)
COUNTY OF EL PASO)

KNOW ALL MEN BY THESE PRESENTS, that I, Pascual Carlos Mier, being the owner of the tracts of land known as "Guayuco" and "El Calero", formerly considered as bancos and recently eliminated as such by the International Boundary Commission of the United States of America and the United States of Mexico, situate in Hudspeth County, Texas, by the title vested in me by lawful process of the Government of the State of Chihuahua, Mexico, acting through its duly constituted authorities, wish to record my said title as evidenced by the accompanying deed and the maps thereto attached.

Signed P. C. MIER.

THE STATE OF TEXAS)
COUNTY OF EL PASO)

Before me, J. N. Phillips, a Notary Public in and for said County and State, on this day personally appeared Pascual Carlos Mier, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 21st day of April, 1930.

Signed J. N. PHILLIPS.
Notary Public in and for El Paso County, Texas.

SEAL:
Notary Public
County of El Paso,
Texas.

PRIVATE DEED

of transfer, of two lots of land situate in the Municipality of Guadalupe, Bravos District, State of Chihuahua, executed by Mr. FRANCISCO R. ALMADA, temporary, Constitutional Governor of the said State, acting with the General Secretary of State, in favor of Mr. PASCUAL CARLOS MIER.

• • • •

CHIHUAHUA, FEBRUARY 20th, 1930.

In the City of Chihuahua, State of Chihuahua, Mexican Republic, on the 20th day of the month of February nineteen hundred and thirty, before the witnesses whose names will be given at the end of the instrument, appears on one part, Mr. FRANCISCO ALMADA, a native of the State of Chihuahua, thirty five years of age, married,

a public officer, an inhabitant of this Capital, residing at two hundred and ninety eight, Fourth Street, in his capacity as Temporary, Constitutional Governor of the State of Chihuahua, acting with Engineer Walterio M. Sein, General Secretary of State, married, thirty eight years of age, a public officer and with residence in this City, and on the other part, Mr. PASCUAL CARLOS MIER, a Mexican, native of Fresnillo, forty eight years of age, a private employee, with temporary residence in this City, at the house number twenty-four hundred and twenty-five Zarco Avenue. We, the undersigned witnesses certify to our personal knowledge of the parties hereto, to their legal ability to contract and obligate themselves and to the statement made by said parties, in compliance with article ninety-five of the Regulations of the Income Tax Law, as follows:—Governor Almada and Secretary Sein, that they have paid tax; and Mr. Mier, that he is not a taxpayer.—Thereupon the parties hereto stated: — — — — — —

1.—That the Governor of the State of Chihuahua, by decree of March fifth, nineteen hundred and twenty five, expropriated Messrs. Thomas Ranken, Jr., Charles H. Peck, Alfred L. Shapleigh, Charles Davis and John J. O'Fallon, of the large landed estate situated on the right border of the Rio Bravo (Grande) in the Municipalities of Guadalupe, San Ignacio and Ojinaga, composed of part of the landed property "La Santimima", and by lands known as "San Antonio", "Vado de Piedra", Demasias de Vado de Piedra" and "El Comedor" or "Agua de Martin, the proceedings having been carried on according to the law, but without the expropriated parties having complied with the precepts relative to the formation of the project of division of the large lands estate; far from that they abandoned every step in the pro-

ceedings and applied to the Claims Commission between the United States and Mexico, demanding such indemnity as they deemed due for their expropriated rights.

2. That in view of the attitude of the expropriated, the Government of the State, by decree of January fourth, nineteen hundred and twenty seven, instructed the Bureau of Agriculture and Promotion to form the project of division of the said large landed estate, and said bureau complying with the order, presented to the Government the corresponding report together with the proposed division, modified in accordance with the several adjudications that were made of a part of the aforesaidmentioned properties by the Executive of the State, according to article seventeen of the State Agrarian Law.

3. That Mr. Pascual Carlos Mier, by petition dated July fifteen, nineteen hundred twenty nine, based on article seventeen of the Agrarian Law of the State, applied for the adjudication of a part of the property named "La Santisima", that lies on the right side of the Rio Bravo (Grande) in accordance with the maps filed by Mr. Mier and that form part of the file; and it must be observed that, shortly after the publication of the expropriation decree, Mr. Pascual Carlos Mier solicited the acquisition of the said lot, by petition of March fourteenth, nineteen hundred and twenty-five, wherefore his new petition (July fifteen, nineteen hundred and twenty-nine), in which he requests the adjudication is but the ratification of his first petition.

4. That on account of the grants made by the Executive of the State to the Agricultural Colonies "Vado de Banderas" and "San Lorenzo", by decrees of November eleventh, nineteen hundred and twenty nine, and February ninth, nineteen hundred and thirty, it was necessary to take the land for said grants out of the area orig-

inally requested by Mr. Pascual Carlos Mier, and therefore the tract of land adjudgeable to Mr. Mier, was reduced to the amount mentioned in the decree of February ten, nineteen hundred and thirty, rendered with reference to the petitions of Mr. Mier, which said decree in its conclusive part is as follows: — — — — — — —

"FIRST:—The application of citizen Pascual Carlos Mier to acquire, under the term of the Agrarian Law of the State, the 10,985 hectares 16 ares and 85 centiares, of land, or as many as may be found in the property named "La Santisima", expropriated by this Government on March fifth, nineteen hundred and twenty-five, is according to law. — — — — —

SECOND:—The survey and location of the *alnd* shall be made—recognizing the land allotted to the Agricultural Colonies "Vado de Banderas" and "San Lorenzo", it being considered that the land lying between the line of the hills and the moveable line of the right border of the Rio Bravo (Grande), is tillable, and the rest as grazing land. — — — — — —

THIRD:—The land hereby adjudicated to citizen Pascual Carlos Mier includes the "bancos" marked with numbers "1" and "2" on the map of the division project and is located on the north of the map of the division project and is located on the north of the Agricultural Colony "San Lorenzo", also the land situated between this Colony of "Vado de Banderas."

FOURTH:—Let an engineer be appointed, who, in aid of the bureau of Agriculture and Promotion of this Government shall survey and locate the land in accordance with the Agrarian Law now in force and the respective circulars.

FIFTH:—Because the land referred to was expropri-

ated by the State Government there shall be taken as a basis for the price of said land the last valuation thereof existing at the land office or at the tax office, plus ten per cent of the said valuation, in accordance with section VII of Article 27 of the Constitution, with the understanding that, as provided by article 19 of the Agrarian Law of the State, the price shall be paid by the purchaser in equal annuities that will fund the principal and interest, which shall not exceed five per cent, per annum, and in a term of not less than twenty years, except by agreement to the contrary.

SIXTH:—Upon the drafting of the contract as to the terms of payment and after the price has been paid in full by the purchaser, the Government shall execute the respective deed of conveyance.

SEVENTH:—Order this decree to be recorded in the respective Public Registry of Property, transcribe the same for the interested parties and let it be published in the Official Periodical of the State for its legal effects.

V.—That in conformity with clauses four and seven above, the survey and location of the land in question was made by an engineer of the Government of the State, the decree of February tenth nineteen hundred and thirty was recorded in the Public Registry of Property of Bravos District, under number eighty, book Five of the Fifth Section, at pages two hundred and twenty-two to two hundred and twenty-three, on the fifteenth day of the same month of February, and Mr. Pascual Carlos Mier was put in final possession of the surveyed property, in accordance with the terms of the respective record dated the seventeenth of February of the current year through the intervention of the engineer appointed for that purpose, and the Mayor of Guadalupe, Bravos District, which is said proceedings were recorded in the Public

Registry of Property of the same jurisdiction on February eighteenth, under number eighty one, book five, fifth section, at pages two hundred and twenty-four to two hundred and twenty-eight.

VI.—That considering that clause number five inserted in the preceding paragraph, left the parties the power to modify the terms of the sale agreement, Mr. Pascual Carlos Mier, by application of February fifteenth nineteen hundred and thirty, requested that the Government of the State of Chihuahua execute to him, at once, upon immediate payment of the price, a deed to the part of land included within the area applied for by Mr. Mier, which said part of land is marked in the maps of the division as fractions No. "1" and No. "2", both located on the north of the agricultural colony "San Lorenzo", fraction "1", comprising the land known as "Guayuco" and fraction "2" the land known as "Colero", the bounds of said fractions being the following: FIRST: Fraction "1" with an area of 136 hectares, 6 tenths arees, on the north of agricultural colony "San Lorenzo", whose delimitation is subject to the following bounds, courses and distances:

BOUNDS.	COURSES.	DISTANCES.
1-2	N. 33° 19′ W.	257.5 N.
2-3	N. 47° 43′ W.	179.6
3-4	N. 20° 21′ W.	51.3
4-5	N. 45° 33′ E.	33.5
5-6	N. 65° 06′ E.	89.6
6-7	N. 35° 17′ E.	59.5
7-8	N. 17° 35′ E.	304.9
8-9	N. 57° 54′ E.	46.9
9-10	S. 65° 44′ E.	74.5
10-11	S. 24° 50′ E.	64.1
11-12	S. 52° 26′ W.	99.3

BOUNDS.	COURSES.	DISTANCES.
12-13	S. 5° 82′ W.	56.7
13-14	S. 60° 09′ E.	57.3
14-15	S. 33° 49′ E.	79.9
15-16	S. 63° 21′ E.	88.7
16-17	N. 65° 42′ E.	128.0
17-18	S. 76° 48′ E.	82.1
18-19	S. 35° 36′ E.	140.9
19-20	S. 83° 34′ E.	68.1
20-21	N. 68° 39′ E.	112.3
21-22	N. 40° 06′ E.	77.6
22-23	N. 56° 21′ E.	116.4
23-24	N. 84° 28′ E.	181.1
24-25	N. 72° 29′ E.	404.2
25-26	N. 86° 56′ E.	144.9
26-27	S. 61° 05′ E.	122.0
27-28	S. 3° 53′ W.	52.5
28-29	N. 83° 18′ W.	60.0
29-30	S. 11° 46′ W.	592.8
30-31	S. 0° 39′ E.	290.9
31-32	S. 16° 17′ W.	74.8
32-33	S. 36° 39′ W.	50.2
33-34	S. 25° 53′ W.	316.3
34-35	S. 19° 03′ W.	285.3

SECOND: Fraction "2" with an area of 40 hectares, 72 ares, 68 centiares 88 thau*d*andths and 4 ten thousandths of an are, on the north of the agricultural colony "San Lorenzo", with the following bounds, courses and distances, it being observed that this fraction No. "2" consists of two portions whose boundary lines are indicated separately as follows: portion No. 1 with an area of twenty four hectares, twelve ares, sixty eight centiares, eighty eigh... thousandths, and four ten thousandths is described as follows:

BOUNDS.	COURSES.	DISTANCES.
45-1	N. 56° 41′ E.	540.25
1-2	N. 71° 13′ E.	61.75
2-3	N. 21° 37′ E.	40.25
3-4	N. 3° 57′ E.	58.25
4-5	N. 1° 07′ E.	236.25
5-6	N. 53° 52′ E.	55.25
6-7	N. 39° 08′ O.	35.25
7-8	N. 85° 51′ O.	60.25
8-9	S. 73° 13′ O.	61.25
9-10	S. 65° 30′ O.	38.25
10-11	S. 66° 37′ O.	55.25
11-12	S. 66° 02′ O.	44.25
12-13	S. 59° 31′ O.	39.75
13-14	S. 63° 55′ O.	241.25
14-15	S. 51° 42′ O.	42.25
15-16	S. 26° 06′ O.	45.25
16-46	S. 10° 35′ O.	343.25
46-45	S. 28° 37′ E.	124.25

portion No. "2" has an area of sixteen hectares six ares and is described as follows:

BOUNDS.	COURSES.	DISTANCES.
		71
1-2	N. 00° 45′ W.	71.02
2-3	N. 83° 01′ E.	259.05
3-4	S. 75° 13′ E.	148.3
4-5	S. 12° 33′ W.	492.4
5-6	S. 30° 17′ W.	236.8
6-7	S. 85° 59′ W.	198.2
7-8	N. 35° 10′ E.	119.1
8-9	N. 33° 13′ W.	56.3

VII.—That the petition of Mr. Pascual Carlos Mier of the fifteenth day of February nineteen hundred and thirty, was acted upon by decree of the Government of

the State, number seven hundred and four dated the eighteenth instant, which reads as follows: "Advise the Citizen Pascual Carlos Mier, in reply to petition of the 15th instant, that the Government of the State is willing to execute to him a final deed of ownership to the two fractions of land marked with the numbers "1" and "2" of the division of the "La Santisima" property, and within the lands known as "Guayuco" and "Calero" are located, both fractions being included within the area of land, whose sale was decreed by this Government, to Mr. Pascual Carlos Mier, by decree of the tenth instant, provided he pays in cash the price of said fractions of land which amounts to TWO HUNDRED AND TWENTY SIX PESOS AND SIX CENTS; and also, that the executive of the State will sign the corresponding deed whenever required by Mr. Mier without prejudice to the execution of the other deed appertaining to the rest of the land, according to terms agreed upon and determined by the decree of the tenth instant entered in file number 130-S. A."

VIII.—That in view of the decrees mentioned in the prefatory part of this instrument, considering that the owners of the expropriated lands did not appear during the proceedings, and elected to claim indemnity before the Commission of International Claims, whereby there arises a case under article twenty-first of the Agrarian Law of the State which literally says that: "The owner of the land has the obligation to execute in favor of the new purchaser the corresponding deed of conveyance"; and in its second part, "that in cases of expropriations the title shall be issued by the Executive of the State", in order to give validity to the purchase and sale contract agreed upon between Mr. Pascual Carlos Mier and the Government of the State of Chihuahua, they come

to draft this present private deed, so that it will serve as title to the purchaser, and which they execute according to the following clauses.

FIRST:—MR. FRANCISCO R. ALMADA, Temporary Constitutional Governor of the State of Chihuahua, in the name of the Government of said State, acting with the General Secretary of State, in compliance with the duties imposed upon him and in use of the powers vested in him by articles six and twenty-one of the Agrarian ~~Law~~ of the State, hereby adjudicates and sells to PASCUAL CARLOS MIER, with all the rights, uses and customs derived from lawful ownership, the two fractions of land described in paragraph VI of the preface of this instrument both situated in the Municipality of Guadalupe, Bravos District, State of Chihuahua.

SECOND:—The consideration of this sale and adjudication is the sum of TWO HUNDRED AND TWENTY-SIX PESOS, SIX CENTS, which the purchaser has paid into the Treasury of the State, according to receipt No. 781 dated February eighteen, nineteen hundred and thirty, which was issued, the price having been calculated from the fiscal valuation of all the expropriated land plus ten per cent, in compliance with what is provided in Section VII of article twenty-seven of the Federal Constitution and article nineteen of the Agrarian Law of the State.

THIRD:—The Governor of the State hereby declares that the fractions of land, the sale of which are the subject of this deed, are entirely free all encumbrances and that they are alienated in any manner.

FOURTH:—Mr. Pascual Carlos Mier accepts this deed in its terms, which shall serve him as title of ownership.

FIFTH:—The costs of this present instrument are at the expense of the purchaser.

The witnesses were Mr. Jesus Cordero, forty eight years of age, proprietor, and Leopoldo Acosta Quiroz, twenty five years of age, a law student, both single and residents of this City, on Aldamá Street, at number nine hundred and twenty one and three hundred and nine, respectively.

In witness whereof this contract is drawn in duplicate, with the stamps required by law, the date first above mentioned. The annexed maps corresponding to the lands sold are made a part of this deed, they are signed by the contracting parties, and according to them the description of the area and bounds was set forth in the clauses relative thereto.

Signed. F. R. ALMADA.
LEOPOLDO ACOSTA QUIROZ

W. M. SEIN.
P. C. MIER.
JESUS CORDERO.

A seal with the
national symbol
Mexico, which says:

"Lic. Jose Mena Castillo,
Notary No. 7.
Chihuahua, Chih.

The undersigned, Notary Public number seven, duly acting, hereby certifies: That this contract was signed in his presence of the witness hereto, by Citizen Francisco R. Almada, Governor of the State of Chihuahua, and by the General Secretary of State, Engineer Waltero M. Sein, and therefore that the signatures of the gr ntors named are authentic. Attest: Chihuahua, April first nineteen hundred and thirty. J. Mena C. Signed. A seal with the national symbol of Mexico, which says:

"Lic. Jose Mena Castillo, Notary No. 7. Chihuahua, Chih. On the left margin of the second page of folio 5, appear six documentary stamps, duly cancelled.

Republic of Mexico
State of Chihuahua SS.
City of Chihuahua
Consulate of the United States of America.

I, Robert M. Ott, Vice Consul of the United States of America at the City of Chihuahua, in the State of Chihuahua, Republic of Mexico, duly commissioned and qualified, do hereby certify that J. Mena C., whose true signature and official seal are, respectively subscribed and affixed to the foregoing certificate, was, on the 1st day of April, 1930, the day of the date thereof, a Notary Public for the State of Chihuahua, duly commissioned and qualified, to which official acts faith and credit are due.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the Consulate of CHIH., this 1st day of April, 1930.

Signed ROBERT M. OTT
Vice Consul of the United States of Ameria.

A stamp for $2.00 duly cancelled with the seal of the American Consulate, Chihuahua, Mexico. Fee: $2.00 Service No. 172.

A seal showing American Coat of Arms and the wording:
"American Consulate, Chihuahua, Mexico.

Filed at ten o'clock a. m. by Pascual C. Mier. Cuidad Juarez, Chihuahua, April second, nineteen hundred and thirty. The Registrar. Signed Rafael D. Martinez. Recorded under number one hundred, Book Forty Night

of the First Section at pages 135, and following: State Taxes paid, according to receipt. C. Juarez, Chihuahua, April two, nineteen hundred and thirty. The Registrar. Signed. R. D. Martinez. A seal: Public Registry of Property. Bravos District, State of Chihuahua.

Republic of Mexico)
State of Chihuahua) SS.
City of Juarez)
American Consulate)

I, W. Everett Scotten, Vice Consul of the United States of America in and for the District of Cuidad Juarez, Chihuahua, Mexico, do hereby certify to the best of my knowledge and belief that the seal and the signature of Lic. Rafael D. Martinez, in Charge of the Civil Register of the City of Juarez, District of Bravos, Chihuahua, Mexico, appearing on the annexed document are true and genuine and entitled to full faith and credit.

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed my official seal this 2nd day of April of 1930.

Signed W. EVERETT SCOTTEN
W. EVERETT SCOTTEN
Vice Consul of the United States of America.

Service No: 605
Fee: $2.00

A seal showing American Coat of Arms and the wording: "American Consulate, Cuidad Juarez, Mexican. Stamps for $2.00 duly cancelled, with the seal of the American Consulate, Cuidad Juarez, Chihuahua, Mexico.

THE STATE OF TEXAS)
COUNTY OF EL PASO) SS.

I, J. N. Phillips, hereby certify that the foregoing on 10 pages, is a true and correct translation of the original document that I have had before me, from the Spanish into the English language, according to the best of my knowledge, ability and skill as a translator of said language.

Signed J. N. PHILLIPS
Translator.

The foregoing certificate was sworn to and subscribed by said J. N. Phillips before me this 21st day of April, A. D. 1930.

Signed FLORA L. LINKER
Notary Public,
El Paso County, Texas.

SEAL:
NOTARY PUBLIC
COUNTY OF EL PASO
TEXAS.

Defendant offered in evidence plan of the Fraction No. 1 of the Terranos de la Santisima, which is referred to in the private deed from the Governor to Mr. Mier.
(Marked "D-10")

Defendant offered in evidence English translation of Executive order of the Governor of the State of Chihuahua, awarding and allotting to Mr. Mier the premises and land applied for in his application to purchase a portion of La Santisima.

Plaintiffs urged the same objections urged to the preceding documents, and further that neither Mexico or Chihuahua, or any officer of either, had any authority to take any act on the land in controversy, and any at-

tempted act was wholly void and of no effect. Plaintiffs also moved to strike each and every one of defendant's exhibits for the reason the same show on their face they are ex parte in their nature, and not judicial decrees; and that they do not show description of the property, immaterial and irrelevant, and would have no probative force as a muniment of title or as evidence.

The document last offered was marked "D-12", and is in words and figures as follows:

D. 12

A seal (printed):

"Free and Sovereign
State of Chihuahua,
United States of
Mexico."

EXECUTIVE POWER.

A seal (stamped):
"Municipal Presidency
of Guadalupe. Bravos
District, Chih. United
States of Mexico."

Subject: Minute record drafted on the 17th day of February, 1930, at Colonia Agricola Ing. Luis L. Leon (formerly San Lorenzo), Municipality of Guadalupe, District of Bravos of this state, by reason of the taking of definite possession of Fractions One, Two, Three and Four of the property of the latifundium known as "La Santisima", awarded to the Citizen Pascual C. Mier.

At Colonia Agricola Luis L. Leon (formerly San Lorenzo), Municipality of Guadalupe, Bravos District of this State, on the 17th day of February, 1930, in the name of the Supreme Government of the State of Chihuahua, I give Definite Possession of 10,985 Hectares, 16 Ares, 85 Centiares, or of as many as may be found in the property known as "La Santisima", in accordance with the boundaries of this property as they existed until March 14, 1925, the date on which they were petitioned for the Citizen Pascual C. Mier before the Supreme Government of the State, and According to the plat, Project of Division of February, 1930, and in conformity with the decree of the Supreme Government of the State, pronounced under date of February 10, 1930, and which is literally as follows:

"FIRST:—The application of citizen Pascual Carlos Mier to acquire, under the terms of the Agrarian Law of the State, the 10,985 hectares 16 ares and 85 centiares, of land, or as many as may be found in the property named "La Santisima", expropriated by this Government on March fifth, nineteen hundred and twenty five, is according to law.

SECOND:—The survey and location of the land shall be made recognizing the land allotted to the agricultural Colonies "Vado de Banderas" and Ing. Luis L. Leon (formerly San Lorenzo), it being considered that the land lying between the line of the hills and the moveable line of the right border of the Rio Bravo (Grande), is tillable, and the rest as grazing land.

THIRD:—The land hereby adjudicated to citizen Pascual Carlos Mier includes the "Blancos" marked with numbers "1" and "2" on the map of the division project and is located on the north of the Ag-

ricultural Colony Luis L. Leon (formerly San Lorenzo), also the land situated between this Colony and the Colony of "Vado de Banderas."

FOURTH:—Let the engineer be appointed who, in aid of the bureau of Agriculture and Promotion of this Government shall survey and locate the land in accordance with the agrarian law now in force and the respective circulars.

FIFTH:—Because the land referred to was expropriated by the State Government there shall be taken as a basis for the price of said land the last valuation thereof existing at the land office or at the taz office, plus ten per cent of the said valuation, in accordance with section VII of Aritcle 27 of the Constitution, with the understanding that, as provided by article 19 of the Agrarian Law of the State, the price shall be paid by the purchaser in equal annuities that will fund the principal and interest, which shall not exceed five per cent, per annum, and in a term of not less than twenty years, except by agreement to the contrary.

A seal (printed)
"Free and Sovereign
State of Chihuahua.
United States of
Mexico."

EXECUTIVE POWER

A seal (stamped)
Municipal Presidency
of Guadalupe.
Bravos District, Chih.,
United States

of Mexico."

SIXTH:—Upon the drafting of the contract as to the terms of payment and after the price has been paid in full by the purchaser, the Government shall execute the respective deed of conveyance.

SEVENTH:—Order this decree to be recorded in the respective Public of Property, transcribe the same for the interested parties and let it be published in the Official Periodical of the State for its legal effects.

Done and signed in the Palace of the Executive Power of the Government of the State of Chihuahua, on the 10th day of the month of February, 1930.

Deputy FRANCISCO R. ALMADA,
Constitutional Governor ad Interim.

MANUEL AGUILAR SAENZ,
Secretary General of the Government.
Rubrics."

An illegible signature)

Fraction No. 1—Beginning at the Head-gates, built on the Rio Bravo by the Colonia Agricola Luis L. Leon (formerly San Lorenzo), Municipality of Guadalupe, Bravos District of this State, and the Head-gate of the canal built by Mr. David Gill, of McNary, Texas, U. S. of A., (thence) in a N. W. direction and the following the margin of the bed of the same river, down-stream, as it existed on March 14, 1925, the date of the petition, passing opposite to La BOMBA, property of Mr. David Gill, built on the left margin of the bed, with all the variations and sinousities that have been, until the waters of the Rio Bravo are again met with in its present channel, for a better identification of the said Fraction No. 1, there will be found in the map presented by the interested par-

ty herein a sinous line which marks the larger in and outs of the river bed. The said Fraction continues with a boundary-line S. W. along the bed of the same Rio Bravo, up-stream, which, along the right margin where it now runs, is also the N. W. boundary of the Colonia Agricola Ing Luis L. Leon (formerly San Lorenzo). This fraction comprises 136 hectares, 9 ares, more or less.

Fraction No. 2—Comprised from point No. 36 of the movable boundary of Colonia Agricola Ing. Luis L. Leon, following down-stream the right margin of Rio Bravo with all its movements and sinuosities, and including a piece of land cut off in 1907, which now lies on the left margin of Rio Bravo and is known as El Calero, to point No. 45 of the boundary of Colonia Agricola Ing. Luis L. Leon (formerly San Lorenzo) on the same Rio Bravo del Norte. This Fraction contains 70 hectares, more or less.

Fraction No. 3—Is comprised from point No. 1 on the right margin of the Rio Bravo, movable boundary of Colonio Agricola Ing. Luis L. Leon (formerly San Lorenzo), thence S. 44° 15′ W. and a distance equal to 1775 meters; thence in the same direction and a distance of 8822 meters to monument "c" (S. E.) of Colonio Agricola Ing. Luis L. Leon; thence S. 42° 30′ E. and a distance equal to 5000 meters, more or less, that is, to S. W. monument of Colonia Agricola Vado de Banderas. Thence N. *4450* E. and a distance equal to 10891 meters, 80 centimeters, along the N. W. boundary of the said Colonia Agricola Vado de Banderas to point No. 1 of the movable boundary of this Colonia on the right margin of the Rio Bravo; thence up-stream along the same margin of this river, until ending at point No. 1 of the Colonia Agricola Luis L. Leon (formerly San Lorenzo), with all its movements and sinuositos.

Fraction No. 4—Comprised between the parting of the Rio Bravo, opposite to Cajoncitos, a point called La Isle and known as the boundary on one of the portions of the property called La Santisima and of the T. O. Riverside Ranch.

In each of these fractions account should be taken of the area thereof, that, according to Section IX of the Law relative to Waters of National Ownership, is designed as being under Federal Jurisdiction, whereof this mention is made of said area, and it should be indicated on the plat that is to be drawn upon the ground by reason of this record.

A seal (Stamped)
"Municipal Presidency
of Guadalupe.
Bravos District, Chih.,
United States
of Mexico."

Wherefore, in taking into consideration the appointment of this commission, conferred in official communication No. 642 under date of February 15, 1930, issued by the Dependency of Agriculture and Promotion of the Government of the State, I give definitive possession of the aforesaid area to Citizen Pascual C. Mier, in accordance with the orders contained in determinative points one, two, three and four, of the decree pronounced by the Executive of the State under date of February 10, 1930; and make it known that especially Fractions Nos. 1 and 2 are untilled lands that do not retain traces of having been worked or inhabited heretofore.

Likewise, the declaration is made that conformity with the boundaries on the part that refers to the Agricultural Colonies Ing. Luis L. Leon and Vado de Banderas, is not

SHOWN because of (their) not yet being owners of the land.

Wherefore, these presents are signed for the conformity of the interested party, and the Cit. Municipal President of the jurisdiction certifies them of greater validity, and because of its being so ordered by the Supreme Government of the State.

Colonia Agricola Ing. Luis L. Leon, February 17, 1930.

Signed PASCUAL C. MIER,
The Interested Party.

(An illegible signature).
The Commissioned Engineer.

Signed IGNACIO RAMIREZ,
The Municipal President.

Filed for registry to-day at 15 o'clock (3 o'clock P. M.) by Mr. Pascual C. Mier.

C. Juarez, February 18, 1930.

Signed RAFAEL D. MARTINEZ.
Custodian of the Register.

(A seal (stamped):)
("Public Register)
(of Property Bravos)
(Dist., State of)
(Chih., United)
(States of Mexico.")

It was registered under No. 81 of Book No. 5 of the Fifth Section, at folios 224 to folios 228. State taxes paid according to receipt.

C. Juarez, Chih., February 18, 1930

Signed RAFAEL D. MARTINEZ,
Custodian of the Register.

I, J. N. Phillips, hereby certify that the foregoing on five and one-third pages is, according to the best of my knowledge, understanding and ability, a true and correct translation into English of its original in the Spanish language that is hereto attached. Done in original typing and two carbon copies, this being the first copy.

(Signed) J. N. PHILLIPS
Translator.

El Paso, Texas,
October 24, 1933.

Defendant offered in evidence English translation of a private correction deed dated February 20, 1930, relative to sale of two fractions of land situated in the Municipality of Guadalupe, dated Chihuahua, May 20, 1930.

COUNSEL FOR PLAINTIFFS: Your Honor, we object to this instrument for the reasons which have been heretofore stated, as well as for one additional reason, in the event of a difference of opinion whether sovereignty over this banco passed when it was created in 1926, or at the time of the decision of the International Boundary Commission, this instrument was executed subsequent to both, on the 20th of May, 1930, and at a time when the banco had long passed to the jurisdiction of the United States, and Mexico is without any authority whatever over it.

COUNSEL FOR DEFENDANT: I have already explained to the Court the theory on which we offer it as relevant testimony.

The document was marked "D-14", and is in words and figures as follows:

D 14

Private Correction Deed, of the Deed of February 20, 1930, relative to the sale of two fractions of land situate in the municipality of Guadalupe, Bravos District, State of Chihuahua, executed by Mr. Francisco R. Almada and Mr. Walterio M. Saenz, Governor and Secretary General of the Government of the State, respectively, in favor of Mr. Pascual Carlos Mier.

Chihuahua, May 20, 1930

* * * *

At the City of Chihuahua, on the 20th day of May, 1930, before the witnesses whose names will be given at the end of this writing, personally appeared; On one hand Mr. Francisco R. Almada, a native of the State of Chihuahua, thirty five years of age, married, a public functionary, inhabitant of this capital, with residence at house number 298 in Fourth Street (Calle Cuarta), in his capacity as Constitutional Governor ad Interim of the State of Chihuahua, attended by Engineer Walterio M. Sein, Secretary General of the Government of the State, married, thirty eight years of age, a public functionary, with residence in this capital; and, on the other hand, Mr. Pascual Carlos Mier, a Mexican, native of Fresnillo, forty eight years of age, a private employe, of accidental residence in this capital at house number 2424 Zarco Avenue. And we, the undersigned witnesses, hereby attest our personal knowledge of the appearers, of their legal capacity to contract and obligate themselves, and that, for the effects of article 95, of the regulations of the Income Tax Law, they declared: Governor Almada and Engineer Sein, that they are up to date in the payment, and Mr. Mier that he is not subject. And

thereupon the appearers said: That under date of February 20, of the present year, the two first named, under their respective capacities of Constitutional Governor ad Interim and Secretary General of the Government of the State of Chihuahua, executed, in favor of the one who appears in third place, a private deed of sale of two fractions of land situate in the municipality of Guadalupe, Bravos District of this State, within which are embraced the lands that compose the "Guayuco" and "Calero" bancos, which on a recent date, passed into the jurisdiction of the United States of America, by resolution of the International Boundary Commission, in accordance with the international treaty of 1905 between that country and the Republic of Mexico; that in that deed, the same as was recorded in the Public Register of Property of Bravos District, under No. 100 of Book 45 of the First Section at Folios 135 et seq., on April 2, 1930, and which was also recorded in the Deed Records of the County of Hudspeth, State of Texas, United States of America, on April 25, 1930, at 10 o'clock A. M., in the Book of Records of said County, Volume 29, page 72; that in said deed the following errors and omissions were made:

In the sixth clause, in describing the boundaries of fraction No. 1, that is, the one known by the name of Guayuco, it was ascribed an area of 136 hectares, 6 acres, and the boundary was not stated on side 35-1 so as to close the perimeter, it being, as it is, according to the plat of the said fraction that is and should be considered as an integral part of the respective contract, that the correct area is 136 hectares, 60 ares, and that the last side of the perimeter, 35-1 corresponds to the left margin of the Rio Grande or Bravo.

In the same sixth clause, in bounding fraction number "2", that is, the one known by the name of Calero, and

which, in its turn, is composed of two portions, it was ascribed a total area of 40 hectares, 72 ares, 68 centiares, 88 thousandths and 4 ten thousandths ares; and in bounding portion number "1" of this fraction under discussion, it was ascribed an area of 24 hectares, 12 ares, 68 centiares, 88 thousandths and 4 ten thousandths ares; and in bounding portion number "2" of the same fraction, it was ascribed an area of 16 hectares, 6 area, and the boundaries on side 9-1, with which the perimeter of this portion is closed, were not expressed, it being, as it is, according to the plat of the fraction known as "Calero", which is and should be considered as an integral part of the contract of land is 41 hectares, 53 ares, 68 centiares, 88 thousandths, and 4 ten thousandths ares; that the correct area of portion number "1" is 24 hectares, 63 ares, 68 centiares, 88 thousandths, 4 ten thousandths ares; that the correct area of portion number "2" is 16 hectares, 90 ares, and, lastly, that the boundary on side 9-1 which closes the perimeter of this second portion, is formed by the left margin of the Rio Grande. That, the errors and omissions mentioned being clarified, as they are, the appearers formulate the following stipulations:

First:—The private contract of purchase and sale dated February 20, 1930, respecting the lands that form the bancos known as Guayuco and Calero, which the appearers executed in this City with the legal formalities, is hereby rectified solely and exclusively in respect of the errors of area and omissions that are contained in the sixth clause, which, in its relevant part, as rectified, should say:

"VI" * * * * Fraction number "1" comprises the land known by the name of "Guayuco", and fraction number "2" (comprises) the land known by the name of "Ca-

lero", the boundaries of said fractions being as follows:

FIRST: Fraction number "1" with an area of 136 hectares, 60 ares, to the North of Colonia Agricola San Lorenzo, and subject in its delimitation to the following sides, bearings and distances:

SIDES	BEARINGS	DISTANCES
1-2	N. 33 D. 19 W.	257.5 M.
2-3	N. 47 d. 43 M.W.	179.6
3-4	N. 20 d. 21 M.W.	51.3
4-5	N. 45 d. 33 M.E.	33.5
5-6	N. 65 d. 06 M.E.	89.6
6-7	N. 65 d. 17 M.E.	59.5
7-8	N. 17 d. 35 M.E.	304.9
8-9	N. 57 d. 54 M.E.	46.9
9-10	S. 65 d. 44 M.E.	74.5
10-11	S. 24 d. 50 M.E.	64.1
11-12	S. 52 d. 26 M.W.	99.3
12-13	S. 5 d. 48 M.W.	56.7
13-14	S. 60 d. 09 M.E.	57.3
14-15	S. 33 d. 49 M.E.	79.9
.....	.....	.....
.....	.....	.....
34-35	19 d. 03 M.W.	285.3

35-1 The left margin of the Rio Grande or Bravo.

SECOND: Fraction number "2" with an area of 41 hectares, 53 ares, 68 centiares, 88 thousandths and 4 ten-thousandths ares, to the north of Colonia Agricola San Lorenzo, and subject in its delimitation to the following sides, bearings and distances, with notice that this fraction number "2" is composed, in its turn, of two portions whose boundaries are indicated separately, as follows: Portion number "1" with an area of 24 hectares, 63 ares, 68 centiares, 88 thousandths and 4 ten thousandths ares, is described:

SIDES	BEARINGS	DISTANCES
45-1	N. 56 d. 41 M.E.	540.25
.....	.....	.....
.....	.....	.....
45-45	S. 28 d. 37 M.E.	124.25

Portion number "2" has an area of 16 hectares, 90 ares, and is described as follows:

SIDES	BEARINGS	DISTANCES
1-2	N. 00 d. 45 M.W.	71.02
.....	.....	.....
.....	.....	.....
9-1	The left margin of the Rio Grande or Bravo.	

Second: With the amendments hereinbefore particularized, the appearers herein ratify in all its parts the said contract of purchase and sale of February 20, of the current year.

And, that it may duly appear, and for its recordation in the Public Register of Property where it appertains, this present contract is signed at the City of Chihuahua, on the date set forth at the beginning, and before the witnesses, Messrs. Jesus Cordero, 49 years of age, a proprietor, and Leopoldo Acosta Quiroz, 26 years of age, a law student, both single men, of this city and residing in Aldama Street at numbers 121 and 309, respectively.

(Signed) F. R. ALMADA

x x x x

(Signature illegible)

(Signed) W. M. SEIN

(Signed) P. C. MIER

(Signed) JESUS CORDERO

A Seal (Stamped):

"Atty. Jose Mena Castillo,

Notary No. 7. Chihuahua, Chih.
United States of Mexico."

The undersigned notary certifies: That Messrs. Francisco R. Almada and Walterio M. Sein are, respectively, Governor ad Interim and Secretary General of the Government of the State of Chihuahua; that the same persons in their said capacities subscribed in his presence the foregoing private document, together with Mr. Pascual Carlos Mier, who, the undersigned also certifies is known to him.

And that it may duly appear, and at the request of the said Mr. Pascual Carlos Mier this present certification is issued, at the City of Chihuahua on the 20th day of May, 1930. I certify. Expunged, "three"; it's of no avail.

(Signed) J. MENA C.

A Seal (Stamped):
"Atty. Jose Mena Castillo,
Notary No. 7. Chihuahua, Chih.
United States of Mexico."

(On the left margin of this page appear three 50c and three 05c documentary stamps cancelled in writing as follows: "Chihuahua, May 20, 1930, P. C. Mier, P. C. Mier," and one 50c and one 05c documentary stamps cancelled by a seal that says: "Atty. Jose Mena Castillo, Notary No. 7, May 20, 1930, Aldama 109, Chihuahua, Chih.", and a stamped legend as follows: "Public Debt."

Filed for record today at 11 hours by Mr. Pascual C. Mier.

C. Juarez, Chih., June 5, 1930.

(Signed) RAFAEL D. MARTINEZ
Custodian of the Record.

A seal (Stamped)
"Public Register of Property
Bravos Dist., St., of Chih.,
United States of Mexico."

Registered under number 32 of Book Number 49 of the First Section, from folios 32 to folios 35. State taxes paid according to receipt.

C. Juarez, Chih. June 5, 1930

(Signed) RAFAEL D. MARTINEZ,
Custodian of the Record.

REPUBLIC OF MEXICO
CITY AND STATE OF CHIHUAHUA
CONSULATE OF THE UNITED
STATES OF AMERICA.

I, Francis H. Styles, Consul of the United States of America at Chihuahua, Mexico, duly commissioned and qualified do hereby certify that the signature on the attached document is that of Licenciado Jose Mena Castillo, Notary Public No. 7 of Chihuahua, Mexico, and as such is due full faith and credit.

In witness whereof I have hereunto set my hand and seal this the 26th day of May, 1930.

(Signed) FRANCIS H. STYLES
Frances H. Styles
American Consul

A ribboned seal:
"American Consulate,
Ciudad Juarez, Mexico."

Fee $2.00
Service No. 321
A $2.00 Consular Fee Stamp
cancelled "5/26/30, F. H. S."

REPUBLIC OF MEXICO
STATE OF CHIHUAHUA — SS
CITY OF CD. JUAREZ
AMERICAN CONSULATE

I, William P. Blocker, consul of the United States of America in and for the Consular District of Ciudad Juarez, Chihuahua, Mexico, duly commissioned and qualified, do hereby certify that Rafael D. Martinez, whose true signature and official seal are, respectively, affixed to the annexed document was on the 5th day of June, 1930, the day of the date thereof, Register of Public Property, of the Bravos District, Chihuahua, Mexico, and to the best of my knowledge and belief his signature and seal are true and genuine and entitled to full faith and credit.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the Consulate at Ciudad Juarez, Chihuahua, Mexico, this 9th day of November, 1931.

(Signed) WILLIAM P. BLOCKER.
WILLIAM P. BLOCKER
Consul of the United States
of America.

A ribboned seal:
"American Consulate,
Ciudad Juarez, Mexico."

Service No: 978
Fee $2.00

A $2.00 Consular Fee Stamp cancelled by a seal that reads:
"American Consulate, Ciudad ..... Mex."

TRANSLATOR'S CERTIFICATE.

I, J. N. Phillips, hereby certify that the foregoing on seven and one half pages, is, according to the best of my

knowledge, understanding and ability, a true and correct translation into English of its original in the Spanish language which is hereto attached.

Done in sextuplicate of which this is the third original.

(Signed) J. N. PHILLIPS
Translator.

EL PASO, TEXAS
October, 18—1933.

JOSE MENA CASTILLO,

a witness for defendant, being first duly sworn, testified as follows: (Testifying through an interpreter):

ON DIRECT EXAMINATION:

My name is Jose Mena Castillo. I reside in Chihuahua. I am a lawyer and notary public. I made my professional studies in the Law School of Mexico, and I got my license in Guadalajara, Jalisco. I have engaged in the practice of the law from the year 1909, and that has always been my principal occupation.

Under the laws of Mexico, in general a notary public is a public functionary appointed by the Governor of the State. His tenure of office is during life. In Mexico the records of a notary public are public records in the sense that they are records of a Government official. The notaries keep their records in books that are called protocols, and those protocols as they are filled pass to the general archives of notaryship and are a part of the Government records, and when a protocol book is opened it is necessary that it shall have been authorized by the Governor of the State.

When I had to do with these documents of Mr. Mier I was an authorized acting notary public, and I am one yet. In order to become a notary public one must be

able to show that he is an expert on the laws of the Republic of Mexico regulating the terms and conditions of contracts.

The general conditions of contracts and the specific conditions for each contract are provided in the Civil Code of the State of Chihuahua. Fundamentally the Code of 1882 is the same Code that is in actual effect in Chihuahua at present, and consequently I consider that I am familiar with that Civil Code. The present Code was adopted in 1898. This is the official edition of the Code of the State of Chihuahua; it bears the seal of the State.

Article 14 of the Code of Chihuahua corresponds to Article 13 of the Code of the Federal District, with this difference, that the Code of Chihuahua states that with regard to real estate situated in the State of Chihuahua, while the Code of the Federal District states in the Federal District and Lower California. That is the difference. Article 13. "With regard to real estate (immovables) situated in the State of Chihuahua the Mexican laws shall govern, although such immovables may be owned by foreigners."

15 is Article 14 in the translation, which reads as follows: "With regard to the form or exterior solemnities of contracts, wills and every 'public instrument', the law of the countries in which they shall have been executed shall govern. Nevertheless, Mexicans or foreigners residing outside of this District of California"—in the Chihuahua Code refers to the State of Chihuahua— "are at liberty to subject themselves to the laws and formalities prescribed by Mexican law, in those cases in which the act has to be put into execution within those demarkations."

The next is Article 17 in the Chihuahua Code, and is Article 16 in the translation. "The obligations and

rights which arise from contracts or wills executed in a foreign country by Mexicans of the State, shall be governed by the provisions of this Code, in case such acts are to be performed within the demarkations referred to."

Article 18 of the Code of the State of Chihuahua, Article 17 of the translation: "If the contracts or wills spoken of in the preceding article should have been executed by a foreigner and have to be carried into effect in the State, the maker shall be at liberty to elect as to the law to which the internal solemnity of the act has to be subject, in respect of an interest which consists of personal (movable) property. With regard to real property, the provisions of Art. 13 shall be observed." Which Article 13 is 12 of the Civil Code of Chihuahua.

The translation is correct.

Article 1395 of the Civil Code of 1882, the translation is Article 1279 of the Code of the Federal District as translated, and reads as follows: "In order that a contract may be valid, it must have the following conditions: I. Capacity of the contracting parties; II, mutual consent; III. That the subject matter of the contract be lawful." That is all that the Code of the State of Chihuahua contains, although the original in the translation contains further matters. The additional matter is a fourth condition, which was also carried into the Chihuahua Code of 1898, but not in that of 1882. This does appear in the Code of 1898: "Iv. That it shall have been entered into with the external formalities which the law requires." That is absolutely a translation of the Code of 1882 and also the Code of 1898.

Article 3056 of the Code of Chihuahua of 1882 is Article 2920 of the translation. "A contract of purchase and sale does not require for its validity any special formality, except when it pertains to immovable property."

Article 3057 of the Code of 1882 is Article 2921 of the translation, and reads as follows: "A sale of an immovable property, the value of which does not exceed five hundred dollars, can be made by a 'private instrument' which the vendor and the purchaser shall sign in the presence of two known witnesses."

Article 3058 of the Code of 1882 is Article 2922 of the translation, and reads as follows: "If any of the contracting parties should not know how to write, another person, not under legal disability, shall sign it in his name, and at his request, but none of the witnesses can sign in the same manner," that is, through another person). I have no objection to make to the translation.

Article 3059 of the Code of 1882 is Article 2923 of the translation, and reads as follows: "Two originals shall be formed of said instrument, one for the purchaser, and the other for the public registry, both to bear the corresponding stamps." There is this difference in the article from the translation, the original is two originals shall be formed from said instrument, one for the vendor and the other for the purchaser, and shall be drawn on the proper sealed paper. This Code was adopted at the time when sealed paper was yet used in Mexico, and afterwards the sealed paper was substituted by revenue stamps, and the meaning here of the words "proper sealed paper" means that the revenue shall have been paid, the tax. That paper was bought as we buy stamps, from the Government, showing that you were complying with the revenue law. It was valid either if it had the stamps or was on the sealed paper, because one and the other were merely showings that the revenue law had been complied with. At the time when sealed paper was used sealed paper should be used; when stamps came into use stamps had to be used.

Article 3060 of the Code of 1882 is Article 2924 of the

translation, and is as follows: "If the value of the immovable property exceeds five hundred dollars, the sale shall be reduced to a deed made before a notary ('public writing.')"

Articles 14, 15, 17 and 18 proceed from International Law. These articles of the Code of 1882 of Chihuahua corresponding to the Code of 1870 of the Federal District, contains the theory, contains what is called in International Law the theory of statutes, according to the statutes adopted by our Code, or we should say the rules to decide the conflict of laws of two countries. The Mexican law accepted what is known as the Royal Statute, that is the Royal Statute contains the principle in virtue of which Mexican laws may be applied only within Mexican territory, and consequently it is acknowledged to other countries their right to impose their laws within their own territories, but this principle is extenuated by International relations, and it has a few exceptions. Among these exceptions is the one that refers to the application of the laws of two countries when contracts are entered into in one of them, to have effect in another. The exception in this case consists in that the external solemnities or contracts entered in a foreign country may be carried to effect with the formalities of the Mexican law, or under the formalities of the country in which they may be executed, and in the case of this contract should have been executed in Mexico. This theory is contained in Article 15 of the Code of Chihuahua of 1882. But this article also has its exceptions. It does not refer in the absolute to all classes of contracts, and there remains outside of its scope contracts relative to immovable properties because with respect to these contracts the Royal Statute governs, of which is the same, the law of the country where the properties are situate. This exception was expressly established in Article 14 of the State

of Chihuahua, and is confirmed by the final part of Article 18 of the same Code. With all clarity the Code of Chihuahua of 1882 provides that with regard to real property, even contracts that may effect them, executed in foreign parts by foreigners or Mexicans shall observe what the Mexican law disposes.

In consequence of all I have said I should say that the testimony of Attorney Valenquela with regard to that point is absolutely erroneous, because he makes undue application of Article 14 of the Code of Chihuahua, trying to subject the forms of contracts that are executed in foreign countries relative to immovables situate in Chihuahua, to the external formalities of a foreign law. According to the prescriptions that I have just quoted or cited the contracts between foreigners relative to goods or property situated in Mexico must be executed with the solemnities of Mexican law. All lawyers know from student days and elementary treatise of International Law from the French author Foignet, this author resolves this case in an express form.

COUNSEL FOR PLAINTIFFS: We are going to object to this witness stating as to what the International Law is, or what any French authority may promulgate as the law.

THE COURT: The Court sustains the objection as to the French authority, because that may be rereferred to in argument, or cited as an authority; but the Court does not sustain objection at this time to any of the testimony of the witness given up to this point.

COUNSEL FOR PLAINTIFFS: We object to that part of his statement, we further object to any part of his testimony which he has given to this time

which is predicated upon International Law of the author referred to, the treatise or provisions or any statement of the author referred to, if predicated upon those authorities.

THE COURT: I overrule that objection, and will give such weight to it as the Court deems proper with reference to International Law.

COUNSEL FOR PLAINTIFFS: We want to preserve *or* exception.

This is a very short quotation and is taken from the French Edition of the Eighth Edition of the Elementary Manual of International Private Law of 1927, on page 274, and is as follows: Exceptions to the rule (locus regit actum). Distinction—The rule locus regit actum is the one that is contained in Article 15 of the 1882 Code of Chihuahua. This continues: "Distinction. The rule locus regit actum has a definite exception in a particular case. Two other exceptions are proposed, but they are doubtful. Definite exception. In which regards acts relative to real estate (immovables), the local law must disappear before the law of the place of the location of the property, in order to determine the form in which they (the acts) must be executed. For real estate, in fact, the law of the location (lex rei situs) is sovereign."

Our judicial system is codified, it is written law, and the common law of the United States, if I am not misinformed, is a law of custom and traditional law, the Anglo Saxon law transported to America. There is therefore a very marked difference in the two systems of jurisprudence.

The quotations which I gave of the French author and the texts of the articles which we read show a concordance of the French doctrine of statutes and the positive law of Mexico.

(Recess from 11:55 A. M. to 2:00 P. M. November 1, 1934).

In accordance with what I stated this morning relative to the articles of the Civil Code that were read in whole I reach the conclusion that this contract from Mr. Davis to Shapleigh and associates has merely the appearance of being legal, but in reality it is a perfectly null contract, of no value. The situation is the following: Mr. Davis, an American citizen, sold to Messrs. Shapleigh and associates, also American citizens, in American territory, an immovable situated in the Mexican Republic, or what is the same. The persons mentioned executed a contract relative to real estate situated in Mexico, so that the effects of that contract would be in Mexico. This being the situation the case is actually foreseen by Article 18 of the Civil Code of Chihuahua, 1882, because this article refers to contracts executed by foreigners, in foreign country, to have effect in the Mexican Republic. And this same article gives us the solution and with regard to the possible conflict of laws of the place where the contract was executed, and the place where the real estate is situated. The solution of this Article is that Article 14 says, that with regard to real estate situated in the Mexican Republic Mexican laws shall govern. We must conclude that this contract should have been executed with the solemnities of Mexican law, that is in accordance with Article 3057 of the same Civil Code. For this contract to be valid it should have been executed in writing, the vendor and the vendee being present, in duplicate, and before two witnesses, and as these requisites were not complied the sale is void.

It is essential under Article 3057 that the contract be signed by both of the parties in the presence of the witnesses, because the signature of the two contracting par-

ties shows the mutual consent, and we already know that there can be no contract without mutual consent. Moreover, we must keep in mind that, in accordance with Mexican legislation, when the law demands special forms for the execution of a contract these forms are confounded with the consent. The rule is that the parties show in the act of the contract for the conveyance of real estate their consent, or what is the same, their agreement over the price and the thing to be transferred.

Consent is always an internal formality of contracts, because there can be no contract without consent, and there can be no sale unless there has been agreement on the price and the thing sold.

With reference to whether the law of the State of Chihuahua recognizes the principle of limitation or prescription by which a title may be acquired or perfected, in this case we should have to make distinctions. In the first place that contract can give rights between the parties contracting, between Mr. Davis and Shapleigh and associates, reciprocally. For example, either of the contracting parties could have claimed the nullity of the contract, but by the principle of limitation or prescription the contracting parties could have lost one with respect to the others. The right to claim that nullity and the contract in this case between the parties could have continued to give off its effects. That is one aspect of limitation. The other aspect of limitation would be that Shapleigh and associates could have acquired by possession of twenty years this real estate, but on this last matter I cannot pass any judgment because, according to Mexican legislation or law, the possession is a fact; that is, the possession must be material, exercising an effecting dominion over the same, material or physical, and in this case I do not know that Messrs. Shapleigh and asso-

ciates have had the physical possession of the latifundium.

Limitation might accrue without having any title or deed with a possession of twenty years physical, public, without being contradicted by anyone, with the intention of acquiring it. By public possession I mean ostensible, obvious to the whole world.

The requisites that I have just stated are the ones that are demanded by the law in order to acquire real estate by possession.

Article 1165 of the Code of Chihuahua of 1882, translation Article 1059, reads as follows: "Prescription is a means of acquiring the ownership of a thing or of freeing oneself of a charge or obligation by virtue of the course of a certain time and under the conditions established by law:" This article refers to two kinds of prescription, the prescription to acquire, and the liberating prescription, which is the prescription which, with the passing of a certain time; will free us of burdens.

Article 1187 of the Code of 1882 of Chihuahua, translation Article 1079, reads as follows: "The possession necessary in order to prescribe must be, I, founded on a just title; II, of good faith; III, pacific; IV, continuous; V, public." The law governs the acquisition of title by prescription to real estate as well as anything else; the general requisites are the same.

Article 1188 down to Article 1193, translations are Articles 1080 to 1085, read as follows:

"That which is or is fundamentally believed to be sufficient to transfer the ownership (dominion) is called a just title."

Article 1081: "He who alleges prescription must prove existence of the title on which his right is founded."

Article 1082, "Good faith is necessary only at the moment of acquisition."

Article 1083, "Pacific possession is that which is acquired without violence. Available possession commences only after it has been judicially declared that violence has ceased."

Article 1084, "Continuous possession is that which has not been interrupted by any of the modes of Chapter 7 of this title."

Article 1085. "Public possession is that which is enjoyed in a manner which could be known by those who have interests in interrupting it."

The prescription of twenty years is the one that has no deed and is the one considered under Mexicon law as of bad faith. It takes ten years in good faith or twenty years in bad faith. All of the other elements are necessary of physical, continuous, public possession, both in the ten and the twenty years statutes, with the exception of the good faith and the bad faith, which is what distinguishes them.

Protocolization of a document is explained in the notary's law, according to that law. The protocolization consists of adding one document to a special file that the notaries have, that is called appendix. An appendix with relation to the protocol—that is the book that I spoke of this morning—and its object is that the notary should issue authentic copies from that document which is added to his appendix.

The conveyance of the properties of a person who dies to his heirs, whether it be by will or that he should have died intestate, transfer should be made only through the medium of special proceedings which are fixed by the Code of Civil Procedure of the State of Chihuahua. The

Civil Code is a substantive law, it is not a procedural law, but the Civil Code contains all the principles relative to inheritance, and in the Code of Civil Procedure the forms are prescribed in order to carry these rights of inheritance into effect. In Mexico no one may call himself an heir through a will or without a will unless the special procedure of succession has been instituted, and the Judge shall have recognized in the first place the heirs named by the deceased, or the heirs recognizd by all the rest who are or may be interested. Their judicial declaration is substantially the only title that can accredit any person with the character of an heir. If one dies intestate, owning real estate in Mexico, in the first place any person claiming the title to the intestate's real estate should denounce the intestate to the competent court. After several proceedings have been concluded, which would be too detailed to relate here, there is a time in the record in which the Judge examines the proofs that may be presented by those who call themselves heirs, declares who have proved their right, and who have not proved it, and in an express form he declares them heirs.

In the event a man dies owning real estate in Mexico, and leaves a will by which he undertakes to dispose of his real estate, the procedure is the same until the time comes when the will is read in the competent court, and before the interested parties, and the Judge, bearing in mind the will of the deceased, recognizes as heirs those who are named in the will. At this time is when the title of heirs is perfected.

This is a translation, it is the second page of Sec. 7 of Article 27 of the Constitution of 1917: "The Federal and State laws shall determine within their respective jurisdictions those cases in which occupation of private property shall be considered of public untility, and in

accordance with said laws the administrative authority shall make the corresponding declaration. The amount fixed as compensation for the expropriated property shall be based on the sum at which the property shall be valued for fiscal tax in the catastral or revenue offices, whether this value be that manifested by the owner or merely impliedly accepted by reason of the payment of his taxes on such a basis, to which there shall be added ten per cent. The increased value which the property in question may have acquired through improvements made subsequent to the date of the fixing of the fiscal value shall be the only matter subject to expert opinion and a judicial determination. The same procedure shall be observed in respect to objects whose value is not recorded in the revenue offices.

I wish to explain in respect to this article which has been read, that in the extant Mexican legislation expropriations are made through the means of the administrative authority. We have no judicial expropriation as under the regime of the Constitution of 1857. The Constitution of 1917 adopted the first section entirely different.

Defendant introduced in evidence Article 27 of the Constitution of 1917, same being marked "D-15", and being in words and figures as follows:

Article 27. The ownership of lands and waters comprised within the limits of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting a private property.

Private property shall not be expropriated except for reasons of public utility and by means of indemnification.

The Nation shall have at all times the right to impose on private property such limitations as the public interest may demand as well as the right to regulate the development of natural resources, which are susceptible of appropriation, in order to conserve them and equitably to distribute the public wealth. For this purpose necessary measures shall be taken to divide large landed estates; to develop small landed holdings; to establish new centers of rural population with such lands and waters as may be indispensable to them; to encourage agriculture and to prevent the destruction of natural resources, and to protect property from damage detrimental to society. Settlements hamlets situated on private property and communes with lack lands or water or do not possess them in sufficient quantities for their needs shall have the right to be provided with them for the adjoining properties, always having due regard for small landed holdings. Wherefore, all grants of lands made up to the present time under the decree of January 6, 1915, are confirmed. Private property acquired for the said purposes shall be considered as taken for public utility.

In the Nation is vested direct ownership of all minerals or substances which in veins, layers, masses, or beds constitute deposits whose nature is different from the components of the land, such as minerals from which metals and metaloids used for industrial purposes are extracted; beds of precious stones, rock salt and salt lakes formed directly by marine waters, products derived from the decomposition of rocks, when their exploitation requires underground work; phosphates which may be used for fertilizers; solid mineral fuels; petroleum and all hydrocarbons—solid liquid or gasious.

In the Nation is likewise vested the ownership of the waters of territorial seas to the extent and in the terms fixed by the law of nations; those of lakes and inlets of

bays; those of interior lakes of natural formation which are directly connected with flowing waters; those of principal rivers or tributaries from the points at which there is a permanent current of water in their beds to their mouths, whether they flow to the sea or cross two or more States; those of intermittent streams which traverse two or more States in their main body; the waters of rivers, streams or ravines, when they bound the national territory or that of the States; waters extracted from mines; and the beds and banks of the lakes and streams hereinbefore mentioned, to the extent fixed by law. Any other stream of water not comprised within the foregoing enumeration shall be considered as an integral part of the private property through which it flows; but the development of the waters when they pass from one landed property to another shall be considered of public utility and shall be subject to the provisions prescribed by the States.

In the cases to which the two foregoing paragraphs refer, the ownership of the Nation is inalienable and may not be lost by prescription; concessions shall be granted by the Federal Government to private parties or civil or commercial corporations organized under the laws of Mexico, only on condition that said resources be regularly developed, and on the further condition that the legal provisions be observed.

Legal capacity to acquire ownership of lands and waters of the nation shall be governed by the following provisions:

I. Only Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership in lands, waters and their appurtenances, or to obtain concessions to develop mines waters or mineral fuels in the Republic of Mexico. The Nation may grant the same right to foreigners, provided they agree before the De-

partment of Foreign Affairs to be considered Mexicans in respect to such property, and accordingly not to invoke the protection of their Governments in respect to the same, under penalty, in case of breach, of forfeiture to the Nation of property so acquired. Within a zone of 100 kilometers from the frontiers, and of 50 kilometers from the sea coast, no foreigner shall under any conditions acquire direct ownership of lands and waters.

II. The religious institutions known as churches, irrespective of creed, shall in no case have legal capacity to acquire hold or administer real property or loans made on such real property, all such real property or loans as may be at present held by the said religious institutions, either on their own behalf or through third parties, shall vest in the Nation, and any one shall have the right to denounce property so held. Presumptive proof shall be sufficient to declare the denunciation well founded. Places of public worship are the property of the Nation, as represented by the Federal Government, which shall determine which of them may continue to be devoted to their present purposes. Episcopal residences, rectories, seminaries, orphan asylums or collegiate establishments of religious institutions, convents or any other buildings built or designed for the administration, propaganda, or teaching of the tenets of any religious creed shall forthwith vest, as of full right, directly in the Nation, to be used exclusively for the public services of the Federation or of the States, within their respective jurisdictions. All places of public worship which shall later be erected shall be the property of the Nation.

III. Public and private charitable institutions for the sick and needy, for scientific research, or for the diffusion of knowledge, mutual aid societies or organizations formed for any other lawful purpose shall in no case ac-

quire, hold or administer loans made on real property, unless the mortgage terms do not exceed ten years. In no case shall institutions of this character be under the patronage, direction, administration, charge or supervision of religious corporations or institutions, nor of ministers of any religious creed or of their dependents, even though either the former or the latter shall not be in active service.

IV. Commercial stock companies shall not acquire, hold or administer rural properties. Companies of this nature which may be organized to develop any manufacturing, mining, petroleum or other industry, excepting only adgricultural industries, may acquire, hold or administer lands only in an area absolutely necessary for their establishments or adequate to serve the purposes indicated, which the Executive of the Union or of the respective State in each case shall determine.

V. Banks duly organized under the laws governing institutions of credit may make mortgage loans on rural and urban property in accordance with the provisions of the said laws, but they may not own nor administer more real property than that absolutely necessary for their direct purposes; and they may furthermore hold temporarily for the brief term fixed by law such real property as may be judicially adjudicated to them in execution proceedings.

VI. Properties held in common by co-owners, hamlets, situated on private property, pueblos, tribal congregations and other settlements which, as a matter of fact or law, conserve their connunal character, shall have legal capacity to enjoy in common the waters, woods, and lands belonging to them, or which may *may* have been or shall be restored to them according to the law of Jan-

uary 6, 1915, until such time as the manner of making the division of the lands shall be determined by law.

VII. Excepting the corporations to which Clauses III, IV, V, and VI hereof refer, no other civil corporation may hold or administer on its own behalf real estate or mortgage loans derived therefrom, with the single exception of buildings designed directly and immediately for the purposes of the institution. The States, the Federal District and the Territories, as well as the municipalities theoughout the Republic, shall enjoy full legal capacity to acquire and hold all real estate necessary for public services.

The Federal and State laws shall determine within their respective jurisdictions those cases in which the occupation of private property shall be considered of public utility; and in accordance with the said laws the administrative authorities shall make the corresponding declaration. The amount fixed as compensation for the expropriated property shall be based on the sum at which the said property shall be valued for fiscal purposes in the catastral or revenue offices, whether this value be that manifested by the owner or merely impliedly accepted by reason of the payment of his taxes on such a basis, to which there shall be added ten per cent. The increased value which the property in question may have acquired through improvements made subsequent to the date of the fixing of the fiscal value shall be the only matter subject to expert opinion and to judicial determination. The same procedure shall be observed in respect to objects whose value is not recorded in the revenue offices.

All proceedings, findings, decisions and all operations of demarcation, concession, compposition, judgment, compromise alienation, or auction which may have deprived

properties held in common by co-owners, hamlets, situated on private property, settlements, congregations, tribes and other settlement organizations still existing since the law of June 25, 1856, of the whole or a part of their lands, woods, and waters, are declared null and void; all findings, resolutions and operations which may subsequently take place and produce the same effects shall likewise be null and void. Consequently all lands, forests, and waters of which the above mentioned settlements may have been deprived shall be restored to them according to the decree of January 6, 1915, which shall remain in force as a constitutional law. In case the adjudication of lands, by way of restitution, be not legal in the terms of the said decree, which adjudication have been requested by any of the above entities, those lands shall nevertheless be given to them by way of grant and they shall in no event fail to receive such as they may need. Only such lands, title to which may have been acquired in the divisions made by virtue of the said law of June 25, 1856, or such as may be held in undisputed ownership for more than ten years are excepted from the provisions of nullity, provided their area does not exceed fifty hectares. Any excess over this area shall be returned to the commune and the owner shall be indemnified. All laws of restitution enacted by virtue of this provision shall be immediately carried into effect by the administrative authorities. Only members of the commune shall have the right to the lands destined to be divided and the rights to these lands shall be inalienable so long as they remain undivided; the same provision shall govern the right of ownership after the division has been made. The exercise of the rights pertaining to the Nation by virtue of this article shall follow judicial process; but as a part of this process and by order of the proper tribunals, which order shall be is-

sued within the maximum period of one month, the administrative authorities shall proceed without delay to the occupation, administration, auction, or sale of the lands and waters in question, together with all their appurtenances, and in no case may the acts of the said authorities be set aside until final sentence is handed down.

During the next constitutional term, the Congress and the State Legislatures shall enact laws, within their respective jurisdictions, for the purpose of carrying out the division of large landed estates, subject to the following conditions:

(a) In each State and Territory there shall be fixed the maximum area of land which any one individual or legally organized corporation may own.

(b) The excess of the area thus fixed shall be subdivided by the owner within the period set by the laws of the respective locality; and these subdivisions shall be offered for sale on such conditions as the respective governments shall approve, in accordance with the said laws.

(c) If the owner shall refuse to make the subdivision, this shall be carried out by the local government, by means of expropriation proceedings.

(d) The value of the subdivisions shall be paid in annual amounts sufficient to amortize the principal and interest within a period of not less than twenty years, during which the person acquiring them may not alienate them. The rate of interest shall not exceed five per cent per annum.

(e) The owner shall be bound to receive bonds of a special issue to guarantee the payment of the property expropriated. With this end in view, the Congress shall issue a law authorizing the States to issue bonds to meet their agrarian obligations.

(f) The local laws shall govern the extent of the family patrimony, and determine what property shall constitute the same on the basis of its inalienability; it shall not be subject to attachment nor to any charge whatever.

All contracts and concessions made by former governments from and after the year 1876 which shall have resulted in the monopoly of lands, waters and natural resources of the Nation by a single individual or corporation, are declared subject to revision, and the Executive is authorized to declare those null and void which seriously prejudice the public interest.

This book (indicating) is the second part of Vol. 30 of the Judicial Weekly of the Federation, published in virtue of law and by the Supreme Court of Justice of the Nation. This weekly contains the decisions that are obligatory in the Republic of Mexico, of the Supreme Court. At page 2919, headed "Agrarian Decisions": "The decisions of the executive power in agrarian matters are wholly final. If they participate of the character of judicial decisions which because they create or extinguish rights produce the effect of res adjudicata and may not be modified or revoked not even by the President of the Republic because they would violate vested rights of patrimonial character, and property would have no stability."

Prior to the adoption of the Constitution of 1917 there was an inhibition against foreigners acquiring title, or prescribing the conditions upon which foreigners could acquire the title to real estate within a zone established along the frontier. There existed the law of February, 1856, issued by President Comonfort, forbidding foreigners to have real estate in a belt of twenty leagues from the frontier, unless a permit should be obtained from the executive through the conduct of the Secretary of the

Department of Fomento or Promotion to acquire such real estate. This requisite was followed in the laws relative to foreigners until the last law, which I believe along in 1884, and which is no longer in force, until a little more than three or four months ago, when the new law came out.

After the law of 1856 a foreigner could own property in the prohibited area if he had an executive permit, and after having obtained the executive permit he could acquire title in that prohibitive area or frontier area of twenty leagues, by prescription.

Q Do you know in what tribunals or before what tribunal it would be necessary, or would have been necessary, for Mr. Shapleigh and his associates to institute proceedings in Mexico to recover title or possession of the La Santisima grant still remaining in the Republic, do you know in what tribunal that would be done?

COUNSEL FOR PLAINTIFFS: I would like to make objection that it is irrelevant and immaterial because institution of suits in Mexico could not be a prerequisite to this suit here.

THE COURT: The Court hardly sees the purpose of the inquiry, but you may pursue it a little further, and if it does not appear to the Court to be material will strike it out.

A If Mr. Burges refers to a possible claim by Mr. Shapleigh and associates against the expropriation proceedings by the Government of Chihuahua I can say that, as a notary public I have had to do with the expropriation proceedings of that latifundium, and having had before me the record of the Government that Messrs. Shapleigh and associates never made any

claim against the proceedings in expropriation because the only procedure left to them was that of amparo, and amparo was not moved by them inside of the fifteen days permitted by the law for the residents in Mexico, nor within the ninety days which the same law of amparo gives to claimants who live outside of the Republic.

Defendant introduced in evidenced the Agrarian Law of the State of Chihuahua, same being marked "D-16", and a translation thereof being in words and figures as follows:

IGNACIO C. ENRIQUEZ, Constitutional Governor of the Free And Sovereign State of Chihuahua, to its inhabitants BE IT KNOWN:

That the Honorable Congress of the State deems its duty to decree the following:

The XXIXth. Constitutional Congress of the Free and Sovereign State of Chihuahua, decrees the following:

AGRARIAN LAW.

Organic of the article 27th of the General Constitution of the Republic and 5th, of the Political Constitution of the State.

OF THE LANDOWNERS.

Article 1st. The maximum extension of land that a person or a corporation duly qualified to possess in the State shall be:

1.000.—One thousand hectares of full irrigated land, or
2.000.—Two thousand hectares of half irrigated land, or
4.000.—Four thousand hectares of dry farming lands and together with any of the maximum amounts.
40.000.—Forty thousand hectares of grazing land.

They are considered: as irrigation lands, the ones that depend upon a sure source that will permit the water to be applied to the crops in the regular periods of irrigation and in a total quantity that in one year, will not be less than six thousand cubic meters for hectare; as lands of half irrigation, the ones that depend upon a source of permanent water, but in quantity less than six thousand cubic meters for hectare a year, or in a larger quantity, if the source be eventual or if any kind of works should be done in that same ground; as the dry farming lands, those whose cultivation depend exclusively from rainfall; and as grazing lands, those which by their roughness, poor quality, or climaterical conditions can not be cultivated.

Article 2nd.—If instead of the maximum of tilled lands of any of the classified lands in preceding article, the landowner prefers to possess lands of the various classes mentioned, he can accomplish this by completing a maximum in accordance to following equivalences:

An hectare of irrigated land is considered equal to two of half irrigated land; and hectare of half irrigated land, equal to two of dry farming land; and one irrigated hectare to four dry farming hectares.

Article 3rd. — Owners of larger extensions of lands than those prefixed in Article 1st., are under the obligations to divide into fractions their lands, and, to this effect a term of ninety days is granted them from the date on which this law goes into effect, so that they may select the extension of land they can keep; and another term of six months, from same date, is granted them for the formulation of the project for the division into fractions of the land in excess, which project is to be submitted to the Executive of the State for its approval attaching

thereto corresponding plats of the land together with authentic title deeds.

Same owners will attach an ample report about the lands covered in the project of division, describing the classification of lands and percentage of same on each lot; if lands are plain or rough surfaced; plants that are cultivated on the lands and those that are susceptible of cultivation; the existing natural vegetation, etc. On fully irrigated lands the water source will be described, stating, if such of federal jurisdiction, or of the State, or private; the capacity of water reservoires; climaterical condition and all other special circumstances that may promote or retard *argi*cultural development, or cattle raising. Separately, and identical, a report shall be rendered on the lands that they may reserve for themselves.

Article 4th.—The boundaries of extensions of lands reserved by the owner, besides being distinctly shown on the plats aforesaid, must be plainly determined on the ground by permanent land marks, each one visible from the other around all the perimeter.

Article 5th.—To comply with provisions of article 3, owners of latifundium shall divide the land into lots to alienate, in extensions up to forty thousand hectares, including pasture or grazing or cultivable lands; in this case, if adquirer may have obtained cultivable land in a greater extension than maximum established he must select at once, the extension which he may legally have the right to keep, leaving the rest of cultivable land *lands*, to be acquired by any one that may desire to cultivate them.

Article 6th.—By the mere fact that the owners, do not present the plats to the Executive of the State in the

form and terms as provided for in the article 3rd., it shall be understood that they refuse to divide the latifundium, into fractions, and the Executive of the State shall carry it out (the division into fractions of said latifundium) by means of expropriation in accordance to provision of subsection C, or the section VII of Article 27th, of the General Constitution.

Article 7th.—Any proprietor that may be considered as a latifundium owner by the Executive of the State or being denounced as such to the same, by any citizen, shall be under obligation by this mere fact, to present to the same executive of the State the title deeds of his rural properties; and by not doing so within the time directed by said First Magistrate, it shall be presumed that he is a latifundium owner and shall be considered under sanction of article 6th., unless proof to the contrary is rendered before the Executive himself within the terms prefixed by said Executive and which shall not be less than fifteen days or more than six months.

Denouncement being made as referred to in this article if verified, denouncer will have the right of preference to the adjudication of excess of land, on the contrary, besides being him responsible for damages, a fine will be imposed upon him, of from ten to one hundred pesos, or instead a punishment by imprisonment of from fifteen to sixty days.

Article 8th.—Once the land selected which proprietor may wish to keep, excess will be left to possibility of being acquired by individuals or corporations legally qualified; but while transfer of dominion is not accomplished for lack of applicants, landlord will continue in possession of same and will have the right to exploit them to his convenience, paying in any event, corres-

ponding taxes to such excess in accordance to provisions of article fourteen.

Article 9th.—If within extension of grazing lands that proprietor may have preserved, there be cultivated lands, these can also be acquired by a third person, provided fulfillment of conditions established in article 23rd., and subject to the Executive decision. If an extension of land of a proprietor is reduced, in accordance to this precept, he can make new acquisitions of lands to complete maximum provided by Law.

Article 10th.—The lands reserved by proprietor can consist of one or several lots, as it may be convenient to his interests, but those of cultivable lands, must be in a convenient form and approximately subjected to their proper and natural boundaries; both stipulations subjected to Executive decision.

Article 11th.—Actual proprietors with rights of selection provided for by this law, can preserve buildings erected on each ranch and protect them within an square surface of sixteen kilometers, when recorded as such in the Public Registrar's Office, considering them as the center of the settlement. This zone of protection shall be denominated "an unenclosed tract of the Ranch Land" (Ejidos de la Hacienda) and shall be free to the disposition of the proprietor.

Article 12th.—When the proprietor of any land the extent of which does not exceed the limit fixed by this Law, may improve its quality, he can keep it in full, notifying the State Government of such improvement.

Article 13th. On division into fractions of the lands, formation of parcels shall be made, in most effective way, so that these be provided with water reservoirs, may have an easy way of communication by main roads

and preferabley by railroad communication, subject to Executive decision.

Article 14th; When term of ninety days, determined by article 3rd, has elapsed, proprietors may affix price on exceedive land that may have been left in their possession, to assess payment of fiscal taxes and for the enforcement of article 19th. If proprietors affix different prices to lands by considering them of different classifications, they must mark the extension of each class on the ground and also on the plats. The fiscal value that proprietors may affixe to their exceeding lands, shall be in effect only for a period of one year, and they must render a Tax report on each December month to take effect the next preceding year.

If owners do not affix value on the lands referred to, value in effect shall be the one affixed by Board of Appraisers, unless modified either by same Board of Appraisers or by the Report for Taxation rendered by owners.

Article 15th. Owners of forest lands producing timber for construction purposes, shall hold rights of ownership, the exploitation of timber, and also the use of existing road communications, and all those that may be constructed in the future with same purpose; but the lands are subject to division into fractions for cattle raising in any event, and for agricultural purposes when suitable therefor.

Article 16th. Rustic properties whose entire products are destined exclusively and permanently for Benificents or Charitable Institutions are excluded from the effects of this Law.

OF THE ACQUIRERES OF LANDS.

Article 17th. It will not be indispensable for the ac-

quisition of lands for them to be strictly submitted to the project of the division into fractions approved by the executive, as if they deem convenient to their interests, in each instance, contracting parties can modify said project, provided that such modification does not counteract the law and previous observance of article 53rd.

Article 18th. Acquireres of cultivable lands are under the obligation to cultivate same, and, if during the course of three consecutive years they fail to cultivate more than fifty per cent of their capacity, they shall be compelled to sell them at cost price plus value of improvements made on the lands, such value to be determined by appraisers. Sale of lands to be effected, when interested parties solicit the lands that are uncultivated.

Article 19th. Seller and buyer, as referred to in article 5th., are in absolute liberty to contract and agree as to price of land and terms of payment.

When referring to lands destined to Agricultural Colonies its value shall be determined, annually, by appraisers. Referring to adjudication of excess land in excess of that selected by owner, which is not destined to Agricultural Colonies and which extension does not exceed more than fifty per cent of the limits assigned by this Law, a price of not more than double the fiscal value reported by proprietor, in accordance to article 14, can not be demanded. Value of said lands will be paid in equal annual payments so as to redeem principal and interests, and which will not exceed five per cent per annum and within a period of not less than twenty years, unless an agreement is made to the contrary. If proprietor should have not made report of fiscal value of the lands, not destined to Agricultural Colonies, the price shall be applied as rated by last existing appraisement

for taxation plus ten per cent that shall be paid by adquirer.

Article 20th. While acquirer does not make full payment of the lands, transfer of alienation can not be made without previous knowledge of the proprietor and provided new acquirer assumes the balance due.

Article 21st. Proprietor of land is under obligation to issue in favor of new acquirer, corresponding title-deed of transfer of dominion. In case of expropriation, title-deed shall be issued by the Executive of the State and, in every case the land sold shall be held as a security of its payment.

Article 22nd. If acquireres fail to pay two annual (payments) installments, proprietors can force them to vacate the land, or such action may be taken by the Governor if lands involved were expropriated; reimbursing, in such cases, the alienator to adquirer, value of improvements made on the land: The acquirer shall reimburse the alienator for value of damages which he may have caused on land or on works thereon constructed, or by damages caused to said lands and works by negligence of same adquirer. Value of improvements and damages, if not agreed upon amongst contracting parties, shall be affixed through appraisers and always be a ground for compensation for payment of such damages.

Article 23rd. Proprietors, as provided in article 9th shall not be under obligation to sell cultivable land in a continuous extension less than one hundred hectares of irrigable land, or its equivalent of half irrigable or dry farming lands, when said land is situated at a distance of more than one kilometer from the nearest cultivable lands, or less than one kilometer if said cultivable lands belong to same proprietor.

Article 24th: Acquireres of lands can not made use of same for mercantile purposes, neither of forests or crops of any quality existing thereon, while price is not paid in full, unless an agreement is made on the contrary.

OF THE AGRICULTURAL COLONIES.

Article 25th: Preference in the use of cultivable lands shall be given for the foundation of Agricultural Colonies: these can be established on excess lands in excess to those selected by actual landowners, regardless of whether such lands have been transferred to a third person, by any means or through any source, unless this new proprietor may have developed work in sych a scale as to demonstrate that in the course of a year from date of acquisition, cultivation is made of at least fifty per cent of the land, subject to Executive decision.

Article 26th: For the foundation of an Agricultural Colony, it is required a minimum of twenty heads of Families and that all together request acquisition of small parcels of cultivable land on a determined tract of land.

Article 27th: Dimensions of parcels of cultivable land that each member of an Agricultural Colony has the right to obtain and proprietor is obligated to sell, are included within following limits, to wit: half irrigating lands from eight to twenty hectares, irrigating lands from four to ten hects, non irrigable, (temporal) or dry lands from sixteen to forty hects.

Article 28th: Before proceeding to designation of parcels which colonists are to obtain, the proprietor from whom land is to be obtained, shall set aside area of from twenty to two hundred hectares according to possibilities of development of the Colony and to constitute its cen-

ter of foundation, to be equi-distant, as far as practicable amongst the parcels and close to a permanent water source, and in general where it is most advantageous to establish a village.

Said land would be fractioned by proprietor in squares of eighty square meters, each square surrounded by an space of twenty meters destined to formation of straight streets and according to cardinal points of direction, Each square should be sub-divided in two fractions of forty by eighty meters which will be put on sale by proprietors, under same term as the rest of cultivable land; a person or corporation, whether or not a member of the Colony can not obtain more than one fraction or parcel in same Colony.

Article 29th: An Agricultural Colony once founded by a petition filed by the majority of its members to or introduced by the Governor, a tract of land will be determined, either surrounding said Colony or closed to its boundaries for its development, right after proprietor is notified of such designated tract of land for this purpose, he can only sell to each applicant, as a colonist, a parcel of dimensions specified in article 27th.

Article 30th: Each member of an Agricultural Colony possessing his respective parcel, will have the right to use adjoining grazing lands, to pasture ten head of cattle (Bovine, horses, mules and the like), and twenty head of stock such as sheep, goats, and the like, by paying proprietor of such grazing lands an annual rent of not more than one peso, per head, of the first and fifty cents (centavos) per head of the second specified stock.

Proprietor of land whereon an Agricultural Colony is founded, to be relieved of obligation imposed upon him by preceding paragraph, will designate an extension of grazing land not less than twenty five hectares, per each

colonist, surrounding or close to the Colony. This designation will be made in accord between proprietor and Colony, or else, through experienced appraisers. If proprietor prefers the sale of grazing land designated in form described, Colony is under obligation to buy it, to make use of same or divide *if* jointly amongst its members, under penalty of losing their rights of pasturing their cattle on same.

Article 31st. Members of each colony, holding their respective parcels, will have the right to use for their domestic necessities, immediate forests by paying proprietors for such rights and according to price previously agreed amongst them or through appraisers. Members of each Colony will designate, by majority of votes, annually, a person or persons to take charge of Colony fuel supply, if so requested by proprietor who will allow such person *ot* persons access to his forest by corresponding payment as mentioned.

Article 32nd. Parcels to be obtained will be of the most regular form possible subject to Governor's decision, and their boundaries duly directed to cardinal points and must have easy access by ways of communication.

Article 33rd. Tract of land destined to open roads, will have a maximum width of ten meters; fifty per cent of its value to be paid by adquirers of adjoining lands and in their corresponding proportions.

OF FOREST LANDS—TIMBER PRODUCERS.

Article 34th: Acquirers of cultivable lands in forest lands producing timber, will pay proprietors of same, besides value of land as provided for in articles nineteenth, the value of trees or plants which if will be imperative to move to clear land for cultivation, at a price

previously agreed among interested parties or at a price affixed by appraisers.

Article 35th: Forest lands producing timber, situated in the Sierra Madre Range, can be secured for grazing purposes, in extensions of not less than one thousand hectares nor more than forty thousand hectares on paying terms established in article nineteenth.

OF THE WATERS.

Article 36th: The use of waters excluded from federal jurisdiction, will be preferred on following bases, to wit:

(1.) For domestic use according to ruling and period of time so established by interested parties.
(2) For cattle raising.
(3.) For irrigation of lands.
(4.) For industrial purposes.

Article 37th: Any acquirer of lands has the right of use of water deriving from natural sources; from dikes or dams existing on nearest land for their domestic necessities and for this only purpose permissiou must be granted to their access.

In establishing Agricultural Colonies, it is not permitted that water reservoirs be comprehended in a determined lot, but that these be traced in a manner that 2 wide roads of minimum width of 30 meters be left and that if possible, be directed from North to South and from East to West, so as to intersect over the reservoirs and giving access to the open land.

OF THE PROCEEDINGS.

Article 38th: The Governor of the State shall watch application of this Law, and, to this effect, shall estab-

lish a Department of Agriculture with sufficient personal to attend it in his Secretary's Office.

The Governor shall also establish a like department, as he may deem convenient, in municipalities, whose clerks in charge shall be denominated "Agrarian Agents of the State". These Agents duties shall be to watch observation of fulfillment of this Law within their jurisdiction; to furnish interested parties all kinds of information for its application and to exercise legal proceedings with petitions presented applying for acquisition of lands. In those Municipalities where there be no Agents, Municipal Presidents (Mayors) will fulfill their duties.

The Governor is duly authorized to regulate performance of duties of Department and Agencies mentioned.

Article 39th: Each proprietor of lands affected by this Law, whose place of residence be outside of Municipalities whereon such lands be ubricated, must appoint a representative to carry on negotiations with parties interested, on each of the affected properties, or else, a permanent representative residing on main place of Municipality's jurisdiction of the lands.

Within a term of ninety days prefixed by article 3rd, proprietors of their representatives, shall report in writing their names and domiciles to the Governor of the State and to the Agrarian Agencies or to corresponding Municipal President.

Article 40th: Term of ninety days granted latifundium owners for selection of land they wish to hold, being elapsed, any person or corporation legally qualified, can make application to acquire lands on terms provided by this Law, subjecting it to the project of division into fractions as outlined, or in preparation by the owner of latifundium.

Article 41st. The Agrarian Agent or instead the Mu-

nicipal President, shall form and carry a record in file of each land application, with all communications, correspondence, minutes and all other testimonials referring thereto, and shall be under the obligation to furnish interested parties certified copies of same when applied for them.

Article 42nd. Parties interested in lands, once convinced that lands they desire to secure are not those lands selected by landlords, shall address him or to his representative, a communication in writing, in duplicate, making corresponding application, copy of which is to be sent to Agrarian Agent or to corresponding Municipal President; this means initiation of further necessary proceedings.

Duplicate of this application, referred to in preceding paragraph, will be *retained* to applicants by landowners or their representatives with a notation to read: "original received", and dated and by not doing so after its presentation, such a case being verified, the Governor, Agrarian Agent or corresponding Municipal President, will impose upon them a penalty of from ten to fifty pesos fine.

Article 42nd. If landowner accepts application of interested party, both by mutual understanding, shall draw a contract of purchase and sale, giving notice immediately thereafter of the transaction to the Governor of the State, Agrarian Agent or corresponding Municipal President attentive to provisions of Article 53rd.

Article 44th. If within the course of five days from date on which applicant verifies delivery of his application to landowner or his representative, both contracting parties may not come into an understanding, applicant may appeal in writing before Agrarian *Ageny* or cor-

responding Municipal President, amplifying, verbally, his petition, and drawing a minute accordingly, which shall be signed by applicant together with any of the officials mentioned.

Article 45th. In case of preceding article referred to, Agrarian Agent or instead Municipal President, shall serve citation upon the landowner or his representative and the applicant to jointly have a conference at a certain day and hour affixed within a period of three day's time; such conference with the purpose to come into understanding terms and drawing a minute in any event, which shall be signed by all present.

Article 46th. If all landowners or his representative do not appear on first notice or citation, and previously verified to this effect, and upon request of applicant, had applicant been present, a new citation in same form shall be served upon the landowner or his representative. If landowner or his representative appear on hour fixed and applicant fails to appear, applicant must be assessed a fine of from one to five pesos penalty, which will be applied as indemnization to landowner or his representative. Payment being verified of amount of fine imposed, a new citation shall be served, upon applicant's request, in same form, to applicant and to landowner; should landowner not comply with citation and applicant shall comply with same, Agrarian Agent or instead Municipal President, will hear again applicant's complaints, and if such are in accordance with the Law, shall proceed to give him possession of the land applied for, such possession shall be considered temporary and copy of the minute to be drawn accordingly shall be sent to landlord.

If applicant does not appear in compliance with second citation served, his application and all proceed-

ings affected thereto, shall be considered void and null, nevertheless, he shall have the right to file a new application by fulfilling same in the legal form.

An application, once presented, for a determined parcel of land no other application on same parcel shall be admitted, until a definite decision is dictated in regard to first application. If several applications are simultaneously presented, preference shall be awarded as provided for in article 51st.

Article 47th. The landowners as well as the applicants of lands can be made represented; (by any person) only for the proceedings of the applications, by means of a simple letter of authorization; being necessary for granting of Title Deed, the corresponding Power of Attorney in accordance to Common Law.

Article 48th: Decision issued according to provisions of Article 46th, awarding or not, temporary possession, shall be revised by the Governor of the State, upon receipt by him or original papers in record.

If on or before ten days of receipt of papers by the Governor, interested parties apply for an audience, day and time will be fixed for the purpose within five days thereafter.

Article 49th. Temporary possession once confirmed by the Governor this shall be considered of a definite character, proprietor shall formalize contract of purchase and sale within fifteen days of date of notice of said confirmation, and on his failure to do so, the Governor shall expropriate the land in question and issue corresponding title.

Article 50th: If temporary possession issued to applicant is not confirmed by the Governor, the applicant must vacate land immediately after gathering products

harvested, and paying proprietor of land corresponding value of rent assessed, according to appraisers report on the subject.

GENERAL DISPOSITIONS.

Article 51st. Those soliciting lands in accordance to this Law, will be preferred in following order:

(I) Lessees of Land

(II) Farmer partners cultivating lands.

(III) Tenants established on lands by virtue of Law governing idle lands or through any other legal source.

(IV) Amongst oldest, professional formers.

(V) Local residentes, or enlisted men in Municipal Guards.

(VI) On equal circumstances in foregoing cases, Mexican citizens preferred to foreigners, Chihuahua State citizens preferred to other State citizens; men who may have rendered services as enlisted men in the Army or in the Auxiliary State Troops; widows and all relatives of men killed in the revolution.

(VII) On equal circumstances covering preceding cases, whoever be designated by proprietor or seller of land. The right of preference established by paragraphs I, II, and III, can only be exercised within a period of thirty days from date of approval of respective project of division.

Article 52nd. After six months of this Law in force, lease contracts of non selected lands, drawn by proprietors upon rights granted by this Law, shall be rescinded.

Article 53rd. Any transfer of dominion of lands made from the promulgation of this Law and in accordance to its regulations must be notified to the Executive of the State, and, to this effect, interested parties in each

case, shall notify accordingly to the Secretary of the Government of the State, attaching thereto plats and all necessary data to identify ownership of property involved.

To that effect, no Notary Public will authorize any title-deed or instrument covering such transfers, unless evidence is produced before them, showing that due note of the transaction has been duly taken by the Secretary of the Government of the State. Identically men in charge of the Public Property Registrar's Office, shall not inscribe, (record) any title deed covering such transfers, unless said title deed shows fulfillment of said requisite, or, if a private instrument, unless testimony is attached thereto proving fulfillment of requisites mentioned.

Violation of the Mandate, in this precept, shall render title deed void and null and also its inscription recording.

Article 54th: The Governor will permit individuals or corporations duly qualified, adquisitions of larger extensions of lands from limit specified by this Law, provided their obligation to improve same for cultivation and division.

The Governor, in granting corresponding permit, in each of these cases, will fix a certain length of time, which shall not be more than two years, during which the acquirers must make the division; and shall stipulate terms of sale and permit conditions, which permit shall be necessary submitted to approval of the State Congress.

Article 55th. If a proprietor simulates a transfer of dominion of all or part thereof of the excess lands, the contract shall be considered null and void, and expropriation of such excess land shall be made through payment of its fiscal value plus ten per cent, and a punishment

of one year imprisonment shall be assessed, both, proprietor and contracting party.

To ask the nullity of this article, popular action is conceeded.

Article 56th: If lands to be fractioned are attached by mortgage, lien, or its crops subjected to redeem a debt, amount of such mortgage lien, or debt, will be proportionately divided amongst each parcel and all monies *acrueing* therefrom will be preferently applied to redeem such mortgage, lien or debt, unless an agreement is made between Creditor and Debtor, through which, lands become free of any debt and thereby become ready to be fractioned. If value of lands is not sufficient to cover full amount of debt, Debtor shall stand responsible to Creditor for remaining balance due.

Article 57th: In cases as prescribed in article 56th., Creditor is under obligation to prove existance of indebtedness to the Governor of the State, within six months from date of promulgation of this Law, who will notify accordingly acquirers of lands indebted. Onnisson, or failure to this notice by Creditor shall deprive him exercise of any further action against acquirers of parcels of land from such indebtedness.

Article 58th. To insure Creditors rights, Notary Publics shall not authorize deeds or instruments transferring lands affected by indebtedness without previously notifying creditor of transfer conditions. Identically, men in charge of the Public Property Registrar's Office shall not inscribe titles transferring dominion of property to which this article refers to, without previously notifying Creditor.

All deeds or instruments drawn or inscribed in the Public Property Registrar's Office in opposition to this precept, shall be null and void.

Article 59th. It shall not be an impediment for the acquisition of lands in virtue of this Law that the latifundia owners manifest not to be able to present for any motive or for their titles of property not being dully requisited, for in any of these cases, the parties interested in the acquisition of lands shall take possession of same, previous the corresponding proceedings, making payments in the General Treasury of the State Office or in the respective State Tax Collector's Offices.

The product of the payments that in these cases may be made in the Public Offices, will be left in them as a deposit to be turned over to the proprietors in case that the contract of Translation of Dominion be formalized within a year, and if that year passes, without having made said contract, said deposits will remain in favor of the State Government Fiscal Fund.

If, after the expiration of the second year since the time that the land was taken in possession of, the latifundia owner would not have formalized the Translation of Dominion, the deposits made during that time shall remain in favor of the State Government Fiscal Fund, and the expropriation of the occupied lands shall be carried out by means of the corresponding indemnification and the Government will issue the title-Deed of property.

Article 60th. Transfers of dominion of lands, made in accordance with this law, which value does not exceed $3,000.00 pesos, will be exempted from any and all State taxes.

Article 61st. If after division of land is verified, an individual or corporation, through any process, should become possessor of land in a larger extension that maximum prefixed by this Law, a term of two months will be granted from date of acquisition of excess land, to determine legally entitled to hold, subjecting excess land

for sale, and duly notifying State Governor on the subject.

Article 62nd. State Governor will draw contracts with landowners that may desire total division in parcels of their lands outlining price of sale, amount of taxes and all other proceedings requisities, in each case, upon bases approved by Congress.

AS TO PROTECTION OF AGRICULTURE

Article 63rd. A Law shall create Rural Cash Credit Institutions with the purpose of encouraging and stimulating agricultural credit.

Article 64th. The Governor of the State is empowered to influence foundation of an Agricultural Bank of Credit with an initial capital of up to one million pesos to lend money for agricultural encouragement. The Law will regulate performance of said Institution.

Article 65th. Parcels of land included within limits outlined in article 27th, belong to Family Patrimony to each member of an Agricultural Colony, provided its value does not exceed value affixed by the Special Law concerning Family Patrimony.

Article 66th. Taxes to be assigned by Law of the Treasury Department to small capital farmers, members of Rural Cash Credit Institutions, or Cooperative Associations, will be twenty five per cent of corresponding taxes assessed other tax payers, under same circustances.

Article 67th. The Representative appointed by each Agricultural Colony will be invested with juridical personality to represent said Colony in all matters pertaining same, before the Government or local authorities; the minute signed by the majority of the farmers and

duly certified by respective Municipal President, will be sufficient to acredit his character.

Article 68th: The Governor, on next year, will initiate foundation of an Agricultural School wherein agricultural teaching will be rendered to all young men applying for same, and Experimental Stations will be established, if possible in each Colony founded and according to Treasury Financial condition; such Stations, will be destined to study and practice of future farmers.

Article 69th. The Governor of the State is empowered to print a bulletin for the exc*u*lsive propaganda of farming and cattle raising industries, issuing in due course pamplets reporting results obtained in Experimental Stations.

Article 70th: The Governor of the State is empowered to organize annually expositions, awarding prizes to farmers and cattle raisers exhibiting best products.

TRANSITORIES.

Article 1st. Governor would grant latifundium owners justifying before him being unable to formulate project of the division into fractions of lands within legal period of time, an extension of said term, up to six months, provided application is filed to such effect and before expiration of legal term and in accordance to provisions of Article 40th.

Article 2nd. For a period of two years from date of the promulgation of this Law, Governor shall be empowered to designate lands not selected by their actual owners, as he may deem convenient for the foundation, of Agricultural Colonies. Said designation, being notified by the Governor, proprietor shall proceed fractioning

and subjecting same land for sale according to legal precepts.

In case of proprietor's opposition the Governor will proceed to the expropriation of lands in reference.

Article 3rd. While regulating the Law of Patrimony of Families is issued, parcels of lands referred to in article 65th will be considered as pertaining thereto.

Article 4th. Prices may be fixed by proprietors to their lands, at expiration of the ninety days term as provided for in article 14th, shall be in effect until the last day of December, this year.

Article 6th. This Law will be promulgated by solemn proclamation in all State Municipalities.

Given in the Hall of Sessions of the Hon. Congress of the State, on the twenty fifth day of May nineteen hundred and twenty two.

A. Ruiz A.—D. P.—. Jose Munoz, D. S.—J. Murillo, D. S.—(Signed)

Therefore, I hereby order its printing, publication, circulation and to be given its due fulfillment.

Governor Palace of the State, Chihuahua,
May 25, 1922.

IGNACIO C. ENRIQUEZ, Governor (Signed)
ROMULO ALVELAIS, Secretary (Signed)

I am familiar with the Agrarian Law of Chihuahua. That law was enacted as a contstitutional organic law, in compliance with the Federal Constitution, which ordered the enacting of such laws in its Article 27, beginning with the last paragraph prior to sub-section (a). It reads as follows: "During the next constitutional

term, the Congress and the State legislatures shall enact laws, within their respective jurisdictions, for the purpose of carrying out the division of large landed estates, subject to the following conditions:

(a) In each State and Territory there shall be fixed the maximum area of land which any one individual or legally organized corporation may own.

(b) The excess of the area thus fixed shall be subdivided by the owner within the period set by the laws of the respective locality; and these subdivisions shall be offered for sale on such conditions as the respective governments shall approve, in accordance with the said laws.

(c) If the owner shall refuse to make the subdivision, this shall be carried out by the local government by means of expropriation proceedings.

(d) The value of the subdivisions shall be paid in annual amounts sufficient to amortize the principal and interest within a period of not less than twenty years, during which the person acquiring them may not alienate them. The rate of interest shall not exceed five per cent per annum.

(e) The owner shall be bound to receive bonds as a special issue to guarantee the payment of the property expropriated. With this end in view, the Congress shall issue a law authorizing the States to issue bonds to meet their agrarian obligations."

The State of Chihuahua complied with the Constitution by enacting its Agrarian Law, and it did not create any agrarian debt previous to it, at the beginning of the expropriations, because the Constitution itself, in its Transitory Article 11, established the possibility of com-

plying immediately with the Agrarian and labor laws without the requisite of the creation of a previous debt for the first nor of regulation for the second. Transitory Article 11 says: "Until such time as the Congress of the Union and the State Legislatures shall legislate on the Agrarian and labor problems the basis established by this Constitution for the State laws shall be put into force throughout the Republic."

Therefore the opinion given here previously by a witness, Attorney Valenzuela, is erroneous in the sense that it is not necessary, nor has it ever been necessary, to create an agrarian debt in order to issue the relative enabling act. Moreover, it should be said that the indemnifications for expropriations in agrarian matters, it is not necessary that they be previous. The Constitution of 1857 expressly established previous indemnification in the matter of expropriations. The Article 27 of the Constitution of 1857 about this matter says, textually, "Private property shall not be taken without the consent of the owner except for reasons of public utility, indemnification having been made. The law shall determine the authority to make the expropriation and the conditions of which it shall be carried out.

"No religious corporations and institutions of whatever character, denomination, duration or object, nor civil corporations, when under the patronage, direction or administration of the former, or of ministers of any creed shall have legal capacity to acquire title to, or administer, real property, other than the buildings immediately and directly destined to the services or purposes of the said corporations and institutions. Nor shall they have legal capacity to acquire or administer loans made on such real property.

"Civil corporations and institutions not comprised within the above provisions, may acquire and administer,

in addition to the buildings mentioned, real property and loans made on such real property required for their maintenance and purposes, subject to the requisites and limitations to be established by the Federal law to be enacted by the Congress on the subject."

And Article 27 of the Constitution of 1917 changed these matters: It reads: "Private property shall not be expropriated except for reasons of public utility, and by means of indemnification." That is all that is pertinent.

As you may see, the Constitution of 1857 in matters of expropriations established previous indemnity, to the expropriated person, and the constitution of 1917 changed the system, and provided that expropriation should be by means of indemnification. There is therefore absolutely no expression in the Constitution of 1917 which indicates the necessity of previous indemnification in expropriations made in agrarian matters, and for previous indemnification, and if previous indemnification is not necessary neither is previous creation of the agrarian debt necessary in order to enact the Agrarian Law. The State of Chihuahua therefore had constitutional powers to enact the Agrarian Law. There is also the decisions of the Supreme Court in matters of indemnification, which says, page 2796, second book of Vol. 30: "Indemnification. That which must be made for lands expropriated for endowment of towns is not necessary to be previous." These decisions refer to the interpretation of Article 27 of the Constitution in the matter of agrarian expropriations, which comprise two cases, the endowment of land to towns and the parceling of latifundiums in order to create small property.

The Agrarian Law of Chihuahua is perfectly legal in accordance with the Constitution of the Republic. The

Constitution of the State is secondary law which arises in the Constitution of the Nation.

Defendant's exhibit No. 3 is the official paper of the State of Chihuahua and is the official organ of the Government of Chihuahua. Its purpose is the publication of all decrees or orders of the Government of the State, and the publication of all the laws of the Federation, and principally it is the organ through which is published all of the legislation of the State of Chihuahua.

Article 2 of the Civil Code of Chihuahua of 1898 provides for the publication of the Periodico Officio. The publication of laws or regulations and other orders of the Government, of the authorities, in order that they be binding, must be published in the official paper of the State. This resolution of the Government of the State was published in compliance with the resolution or decree itself, which orders that it be published in the official organ of the State, as follows: "Fourth. Notify and for that effect publish these presents, this present decree in the official periodical of the State so that it may have its legal effect." This publication, in accordance with its very provision, had the effect of notifying all of the parties interested and named in the decree.

In my legal opinion the action taken by the Governor and authorities of the State of Chihuahua, as set forth in defendant's exhibit 3, was legally efficient and sufficient to accomplish expropriation of the lands involved and described in that exhibit. Moreover, I as a notary public had before me this record, and as a notary I certified that all of these proceedings had been complied with in accordance with the Agrarian Law. That is my opinion.

The application of Mr. Mier to acquire a portion of the La Santisima latifundium was drawn in accordance with the Agrarian Law, as is shown by the fact of its

having been admitted by the Government Department where these proceedings are had. The acceptance is in conformity with the Agrarian Law.

Q Please state whether the application of the person first applying to purchase a given portion of an expropriated latifundium, under the law, creates a vested right in the first applicant, provided he is legally capable of acquiring the title, and does subsequently take the steps required by law to acquire the title to the land applied for?

COUNSEL FOR PLAINTIFFS: We want to object to that question and the answer that could be given thereto. The terms of the Agrarian Law is susceptible of construction by this Court, and that the construction of it as to whether one applicant who had filed would receive a vested right just upon the filing of the application it seems to me would be a matter to be determined by this Court, and is not susceptible of expert opinion.

THE COURT: The Court will note your exception, and will hear from you further on the subject.

A According to the Agrarian Law when an application is filed for a certain lot of land no other application is then admitted for that same land, but the matters will be terminated with the first applicant. This is what is established by the right of preference for the first applicant, and it gives the right acquired, and it may be read about this matter the final paragraph of Article 46 of the Agrarian Law.

Defendant's exhibit No. 8 is the result of the whole proceedings relative to the application of Mr. Pascual Mier, and therefore said contract is in confirmity with

the Agrarian Law, and it contains all of the general conditions to be valid according to the civil law.

Defendant's exhibit No. 11 is an instrument showing definite possession of the lands applied for, in accordance with the Agrarian Law of the State, is one of the formalities demanded by the same law within the proceedings, and this document contains the proceedings of delivery of possession to Mr. Pascual Mier, and because of that possession being a part of the record of Mr. Pascual Mier this document is in accordance with law.

This document, defendant's exhibit No. 13, is valid because it is adjusted to the Agrarian Law.

Referring to all the steps taken and instruments executed, awards or grants, conveyance of title, that the State of Chihuahua made in favor of Mr. Pascual C. Mier as an applicant for lands under the terms of the Agrarian Law in force in the State, said transfers of dominion are perfectly legal and passed to Mr. Mier to vestment of a proprietor in accordance with all of the laws of Mexico.

A recess was then taken at 5:00 o'clock P. M., and upon reconvening at 9:30 o'clock A. M., November 2, 1934, proceedings were resumed as follows:

JOSE MENA CASTILLO,

a witness for defendant, thereupon resumed his testimony as follows:

ON CROSS EXAMINATION:

I am not familiar with the American common law system of jurisprudence.

In Mexico there is a body of doctrines and principles relative to interpretation, very special in French text,

because our civil code is taken in great part from the Code Napoleon.

In Mexico when two articles of a Code are in conflict various rules are followed to conciliate them principally endeavoring to harmonize those two precepts in accord with their nature and their ends. For example, we have a rule of interpretation which says that special or specific provisions of the law repeal the dispositions of general character. For example, the special requisites for purchase and sale in so far as their external form and other elements of sincerity should be studied in preference on the *capital* that relates specially to them instead of in the chapter that relates to general contracts. This rule is expressed in the Civil Code itself.

Referring to Article 15 of the Code in existence at the time of the deed from Bennett H. Davis to Ranken, Shapleigh and Peck, reading "The form and external solemnities of contracts, wills and all public instruments shall be controlled by the laws of the place in which they may be executed," a fair statement of the meaning of that is an instrument valid where drawn is valid in Mexico, provided it does not refer to real estate.

The articles of the Code are not understood in themselves, but always with reference to others that fix them as to the matters concerned. All articles are logically chained together, if not in an express manner, but by an implicit manner they refer to each other.

This Article 15 referred to has no breadth to cover real estate. Real estate is governed by Article 14 of the Code of Chihuahua, 1882. The part of Article 15 that was read is limited to powers of attorney and other juridical acts that do not refer to real estate. This article does not refer to real estate, because there is an article, which is 14, which in an express manner declares that real estate situate in Mexico is governed by Mexican laws.

In Mexico movables and immovables are both comprised in the term property. The general rule on the forms of contracts contained in Article 15 embraces everything that is not covered in the clause of exceptions, and as Article 14 is a law of exception relative to real estate it is evident that real estate is not covered by the provisions of Article 15.

In Mexico it is always the custom to make out a bill of sale or an invoice for personal property, and is a very simple matter especially for the matter of taxes.

Wills are not instruments that would transfer dominion in Mexico, and that is why they can be made in accordance with Article 15.

This deed we have been talking about appears on its face to be effective, but as a matter of fact it is null and void and of no value, because Article 15 of the current Code, which would be Article 18 of the Code of 1882, governs. That article is: "If the contracts and wills referred to in the preceding article should be executed by a foreigner to be performed in the State the obligor in the contract or testator in the will may elect the law to which the same shall be subject in so far as it refers to personal property, but in effect to real estate the same shall be governed by Article 11.". In my opinion that article applies only to instruments executed outside of Mexico.

These contracts, in relation to what is said in Article 18, are only those which are made in foreign countries because Article 18 speaks of the intervention of contracts by foreigners, and that is why I said that the contract, Davis-Shapleigh, should be governed by these two articles, because the contractors, Davis, Shapleigh and associates, are foreigners. The contract, moreover, was executed in a foreign country, and it was executed with respect to real estate situated in Mexico. In consideration

therefore of the location or situation of the real estate Mexican law should govern the execution of that contract.

I cannot say whether Shapleigh and his associates acquired the latifundium by prescription, because I am not a witness that they have been in possession during the term required by law.

It is possible that Shapleigh and associates could have acquired title by prescription, having complied with all of the requisites by prescription.

In Mexico the property of a deceased does not pass to his heirs until it has been clarified who those heirs are, and the award of the properties has been made to those heirs. The primary purpose of the inheritance laws of Mexico is not to facilitate the collection of inheritance taxes.

I cannot point out a staute which provides that failure to institute heirship proceedings constitutes a fatal defect to the title of the property involved, because the law merely defines the procedure, the right of the heirs who acquire the title legally. Suppose the meeting of those who consider themselves to be the heirs, before the Judge. Article 1598, of the Code of Civil Procedure of the State of Chihuahua, reads: "If the proof is sufficient and all be agreed, including the representative of the Treasury the Judge shall declare them to be heirs in the portions to which they would have a right," and in the same meeting they shall name the permanent administrator in the manner provided in Article 3588 of the Civil Code, and now Article 1579, Book 2, Section 2, of the Code of Civil procedure of the State, 1899. Proceedings relative to wills, probate matters, again considering that they have their meeting, as first stated. Article 1579, in the case that all those interested in agreement with the representative of the Treasury waive the meeting referred to in the preceding articles, and are in agreement with regard to the

will, the Judge without further procedure will recognize as heirs to those set out in the will, if it is legitimate, in the portions to each of them corresponding. In accordance with two articles the character of an heir can be accredited only after these meetings, whether there has been no will or there has been a will.

When a man dies in Mexico and leaves property by a juridical fiction those properties are considered as a community for those who, according to law and the will, may be heirs after the juridical declarations have been made to which I have referred. Then you have heirs, and then they have merely the title of undivided estate in that property, and that is why there is a representative for those properties, who is the administrator or executor. After the payments have been made to the Treasury on account of the inheritance tax the properties may be divided among the heirs, and until the title has been executed to each one of them by judicial intervention they cannot consider themselves as owners of the properties left by the deceased. With respect to the fiscal action in Mexico it is the same as in all places. He who does not pay his taxes is excluded.

It is my view upon the death of the owner of real estate, whether testate or intestate, title does not vest in anybody until conveyed by the proper court.

Q The owner loses it as soon as he dies, doen't he?

A He who dies, I believe, loses everything.

In the meanwhile ju juridical fiction it remains in the custody of its probable heirs.

I have had knowledge of some cases in Mexico in which a person dies, and another who calls himself his heir occupies the property and uses it without appearing before the courts. Afterwards the descendants of this sec-

ond person continue in the same manner, but this cannot be called a successor from a legal point of view because it is not known whether there were heirs or there were not. These are fact situations and not legal situations. It is not a common practice in Mexico to transfer property from one to another merely by having a recital in the deed that he obtained that property from his father, and his father from his father, and his father from his father, without any further proof of ownership. That occurs, but it is not the rule.

Article 3372 of the Civil Code of Chihuahua, 1882, reading Article 3235 of the translation of the Civil Code of the Federal District, is as follows: "The title and legal possession of the properties, and the rights and obligations of the author of the inheritance, are transmitted by the death of the latter to his heirs on the terms established in the present book."

One who occupies land has no right as an heir, calling himself an heir without being one, but he can acquire the property by prescription. We will suppose that one who calls himself an heir, without having been declared so judicially, retains the property of his father and possesses it for forty years, by the transforce of this time he may become the owner by or through possession, but not by heirship.

In Mexico the heirs possess the goods or properties left by the deceased through the medium of the executor or administrator, or which is the same; the administrator possesses in the name and for the heirs.

We have in Mexico two classes of heirship or succession, the intestate and the testate, or what is the same, the voluntary, because the deceased has designated his heirs, or the legitimate or legal, that in virtue of which the law recognizes those who supposedly he might have named, but which he did not name, the deceased might

have named or might not have named, and therefore inheritances are delivered to those who are named in the wills, or those who are recognized by law when there is no will.

I consider the Agrarian Law regular and valid. It is true that the Federal Constitution of Mexico authorized the various States to pass Agrarian Laws pursuant to which expropriation could be made, and also provided that Congress shall pass a law providing for the creation of the agrarian debt, with this explanation: The Federal Constitution not only empowered the States to enact their agrarian laws, but it imposed upon them the obligation to enact such laws, and it imposed on them also the obligation to put them in force immediately without any previous condition.

I say that the agrarian law of Chihuahua is constitutional because it was enacted in accordance with the Federal Constitution, and that it is not true that any legal precept demanded the previous creation of the agrarian debt. The creation of the agrarian debt is not the condition for the validity of the law nor of the expropriations.

I suppose the land that is expropriated has to be paid for some time. It may be that Mexico can take the time and pay for the land expropriated whenever she gets around to it.

It is my opinion the deed from the Governor of Chihuahua to Mr. Mier, dated the 20th of February, 1930, vested title to El Guayuco Banco in Mr. Mier as of the date of the filing of his first petition on the 14th of March, 1925, and in support of that opinion I have referred to you the final part of Article 46 of the Agrarian Law. A fair English translation of that part is: "A petition for a specific lot of ground having once been presented no other petition shall be allowed to be filed with reference

to the same lot until there shall have been a final resolution on the first petition."

This article is drawn upon a principle which is recognized in Mexico and in the United States with regard to he who is first in time is the first in right. Since Mr. Mier presented his application, and that application was admitted or accepted, as is shown in the record, he acquired a right to be preferred in the acquisition of the lands applied for. Moreover, the final decree which awarded him the lands was made six, eight or ten months later, we may say, as an example.

Q Wasn't it made four years later?

A Six or four years later, the right of property should go back to the date of the petition in virtue of the Latin precept "pitior tempore poseur."

The deed we are talking about was prepared by me, having the record before me. There is no reference in the deed to the fact that Mr. Mier is vested with rights prvious to the date of the contract, nor could it so do because it is a declaration that is strange entirely to the contract.

When the contract of the Government with Mr. Mier was made the Department of Agriculture and Dependency of the State Government passed over to me, as a notary public, the record, and having that record before me the contract was drawn, making reference to all the steps of the proceeding in accordance with the Agrarian Law until we reached the decision in virtue of which these lands were awarded to Mr. Mier. Therefore, on these antecedents and of the fact that I myself sanctioned in a way the contract by my intervention I can assert that that contract is perfectly adjusted to the Agrarian Law, and therefore is valid.

In accordance with the Constitution itself it is not

essential to the validity of an expropriation proceeding that it be preceded or accompanied by an indemnification.

I do not know of a decision of the Supreme Court of the State of Durango in a case instituted by the widow of Pastor Moncada. But in Federal matters, that is in what concerns indemnifications or expropriations, agrarian expropriations, which are administrative proceedings, the Supreme Court of the States has nothing to do.

(Witness excused).

Recess from 12:00 o'clock noon, until 2:00 o'clock P. M., November 2, 1934.

FAUSTO E. MIRANDA,

a witness for defendant, being first duly sworn, testified as follows:

ON DIRECT EXAMINATION:

My name is Fausto E. Miranda. I am a practicing lawyer. I have been admitted to the practice of law in Mexico twenty-nine years. I am a graduate of the National School of Jurisprudence in Mexico City. During the twenty-nine years I have been admitted to practice of law that has been my only occupation.

I have been attorney for the American Smelting & Refining Company in Mexico for the last thirteen or fourteen years, and my main occupation with them has been the study of Mexican titles.

I have heard the testimony given in this case thus far.

I have examined plaintiffs' exhibit No. 18, which purports to be a deed from Bennett H. Davis to Thomas Ranken, Jr., A. L. Shapleigh and Charles Peck. This

document is a photostatic copy of a certified copy issued by a notary public of Cuidad Juarez, Mexico, Mr. Sostenes Rodriguez, of the protocolization of an American document executed in El Paso, Texas, by Mr. Bennett H. Davis on the 13th day of February, 1897. The American document which was made to convey a fraction of a certain property known as Santisima, in the State of Chihuahua, was signed only by Mr. Davis and not by the purchasing parties. It is a matter of written law in Mexico that it is essential that the purchaser or some one acting in his stead sign an instrument of that kind. Mr. Mena Castillo, who testified already in this case, has cited the article of the Civil Code of the State of Chihuahua with reference to the necessary elements for the validity of a contract of this nature, and I concur in Mr. Mena Castillo's opinion in that respect.

It has been said in court that, according to the Civil Code of the State of Chihuahua of 1882, when this contract was made, the necessary elements for the validity of a contract were capacity of the contracting parties, second, mutual consent, third, a lawful or a legal matter, and, fourth, external formalities. In this contract, both parties, the vendor and the purchasers, were American citizens. Therefore we have a contract made or executed entirely between foreigners in Mexico, and I sustain that the purchasers had no capacity to acquire that property. In reality there is no contract, the consent of the purchasers do not appear at all in this document, and it is absolutely necessary. As a general rule the contract of purchase and sale, as we call it in our Civil Code, is a consential contract, that is executed or made by the mere mutual consent of the parties without the necessity of any further act or formality for its validity. That is the general rule, but there is an exception to real estate in Mexico. When the contract of purchase and sale

refers to real estate then it becomes a solemn contract and the consent of both parties must appear, must be shown in the text of the contract itself.

Under the laws of Mexico contracts for the sale of real estate may either be made in some cases by a private writing and in other cases by a public writing before a notary, and that depends on the amount of the purchase price. When the purchase price is of 500 pesos the contract can be made in a private writing, which must be signed by both parties and before two witnesses, and the law is so particular in this regard that when one of the parties cannot write another person's, a third person, must sign in his name, and none of the witnesses can sign for one of the parties.

This instrument I am examining shows the consideration stated is $10.00. It may be at that time that $10.00 were equivalent to 10 pesos, or 20 pesos, but by all means, whatever the rate of exchange was at that time, it was under the purchase price, was under 500 pesos. Since the purchase price was under 500 pesos the instrument could have been by private writing, in which event the vendee or some one as his lawful representative, some one with power of attorney, must sign the instrument.

I heard Mr. Mena Castillo's testimony to the effect that in respect to real estate Articles 14 and 18 were controlling; I concur entirely in that opinion.

This contract, plaintiffs' exhibit No. 18, in my judgment, is also null and void because of lack of capacity of the purchasers to buy, to acquire.

The law of February 1, 1856, Article Second, reads as follows: "No foreigner shall, without the previous permit of the Supreme Government, acquire real estate (immovables) in the border states or territories unless at twenty leagues from the frontier line."

Defendant offered in evidence Transitory Article II attached to the Constitution.

According to this law foreigners could not acquire real estate, immovables, within the zone of twenty leagues from the border, with exception when they obtained a previous permit from the Federal Government. The law which I read is a prohibitive law. The deed, or the document executed by Mr. Davis is dated the 13th day of February, 1897. At that time Messrs. Shapleigh, Ranken and Peck had not obtained their permits to acquire that land. The permit acquired by them afterwards is dated August 25, 1897, plaintiffs' exhibit 20. The incapacity of the purchasers of which I am speaking consists in the prohibition of the law to foreigners to acquire land within a zone of twenty leagues from the border, and as the purchasers had not obtained their permit before the document was executed by Mr. Davis they were unable, they had legal incapacity to acquire title to that land. If they obtained their permit in August, and the deed had been dated in February, in my opinion the permit did not relate back. Whatever the value of the document executed by Mr. Davis might be, the law of 1856 is very plain. It is a prohibitive law, and the Civil Code of Chihuahua of 1882, which was in force at the time of this transaction, contains the following provision in its Article 7: "Acts executed against the tenor of prohibitive laws, shall be null unless the same laws provide otherwise." The law in this case does not provide otherwise. The prohibition is absolute, and it falls on it this nullity.

Assuming the deed when executed in February was null and void it could never have been made valid. To make a transfer of that land Mr. Davis and the purchasers

would have had to execute an entirely new and different deed.

It appears from the evidence Mr. Bennett H. Davis had a permit to own property within the prohibited zone. Those permits were always personal. A foreigner had not the unrestricted right to acquire property in the mentioned zone of twenty leagues from the border. He could acquire it by a permit, and the permit is only a gracious concession of the Government, which is also subject to cancellation, to revocation, at any time. A permit is not subject of sale within itself, it cannot be transferred, not even to the heirs.

Referring to the laws of Mexico with regard to prescription, the terms for limitation is of ten years when the possession is bona fide, in good faith. That is when there is title. When there is no title the time of limitation was, according to this Code of 1882, of thirty years, and according to the current Code of twenty years. The title of the prescription of this present case would have run during the life of both Codes. The rule established by the new Code is that the time of the prescription in such cases should be counted according to both Codes, and therefore it would be a little over twenty years, but in order to make this question more simple I am going to refer to the twenty years limitation, which is more favorable for the plaintiffs' viewpoint. Suppose also that a foreigner could acquire property by limitation within the twenty league zone, that period of limitation must be counted from the date of the permit, from August 25, 1897, and the twenty years would have elapsed on the 25th day of August of 1917; but before the expiration of the twenty years term the new Constitution, which became effective on the 1st day of May, 1917, prohibited in an absolute manner the acquisition by foreigners of lands within a zone of one hundred kilometers

of the border. Therefore the time of limitation, the twenty years mentioned by law, had not elapsed before the new Constitution came into effect, and that means that none of them could have acquired, or did not acquire, by limitation even in the case of a lawful possession. When a person acquires title by prescription after the ten or the twenty years, according to the case, expired he appears before a court, a Judge, proves in an ex parte proceeding that he has been in lawful possession, with all the elements for possession for the required period of time, and those proceedings are his title. The Court orders that a certified copy of the proceedings be given to him so that he can record that, and those proceedings are his title. Prior to the time the twenty years elapses he has no title. Possession is a matter of fact.

The elements of possession, according to the law, are as follows: Said articles, which are just the same, read: "The possession necessary in order to prescribe must be: I, Founded on a just title; II. Of good faith. III. Pacific. IV. Continuous. V. Public."

In this case we have decided that there was no title. Good faith is, according to the law, necessary only at the moment of acquisition. Pacific possession is that which is acquired without violence; available possession commences only after it has been juridically declared that violence has ceased. Continuous possession is that which has not been interrupted by any of the modes enumerated in Chapter VII of this title. Public possession is that which is enjoyed in a manner which could be known by those who have interests in interrupting it.

Under the laws of Mexico a possession which is merely constructive, as distinguished from manual possession, could never ripen into a title by prescription. In order to acquire title the possession must be actual, physical.

Foreign public documents, to constitute any evidence

in Mexico, must be protocolized according to our law. The first steps to make a foreign public document in Mexico, or legalization, are authentication of the signature of the officer who authorized the document, by the Mexican Consul. The signature of the Mexican Consul is afterwards authenticated by the Department of Foreign Relations in Mexico, and after that has been done, if the document is written in a foreign language, it is taken to a court, with a translation thereof, and the Court appoints an interpreter who verifies the translation with its original, and if found correct, or correct it if it was not. The Court orders that the document be protocolized before a notary public. The notary public enters a kind of a minute in his book, known as protocol, and the original document and its translation are attached to the appendiz of the protocol in the same office of the notary, and when that is done the notary public issues certified copies of his minutes in his protocol, and of the document itself. Said certified copies are called in our language testimonios. Protocolization does not add any validity to the document itself.

Capacity of the contracting parties and mutual consent are internal elements of a contract under the laws of Mexico. Those are the essentials.

I heard Mr. Mena Castillo's testimony this morning in connection with the proceedings in intestacy. I agree with what he said this morning.

An heir may have a potential right to become the owner of all the property of his father, but until the provisions of the Code have been complied with he is not an heir. To become an heir it takes a judicial declaration or determination.

As a general rule the Court of the last domicile of the deceased has jurisdiction to probate the will, but if a person died not having a domicile within the Mexican *Mexi-*

can Republic, then it is the location of the situation of the property that gives jurisdiction to the Court. This property being located within the State of Chihuahua, in the Brazos District, the Civil Court of Juarez would have been the proper court to probate the will.

Supposing that a man owns property in Mexico, he dies in the United States, leaving a will, if the will has been probated already in the United States, what I have done many times, according to the law, is to take all of the proceedings from the court in the United States, and the Probate Court of the United States, have the signature of the officer signing the exemplified copy of the document legalized by the Mexican Consul; then I take it to the Department of Foreign Relations and have the signature of the Mexican Consul legalized, have these documents protocolized so they can before a proof in Mexico according to our laws. I appear before a court with the documents. I must include the death certificate, I file the will and death certificate, and all of the proceedings, in court. I also file all the documents relating to the relationship of the heirs; if the deceased was married I will file a certificate of marriage to show the right of his widow. I will file the birth certificates of his children; all the necessary documents to prove the rights of the heirs. After I have filed these documents, if the testator appointed an executor the same executor will be recognized by the Mexican Court. If not, then the heirs among them elect an administrator, who is approved by the Court. That is the first section of probate proceedings in Mexico. When the first section is closed, then the second section comes, which starts with inventory of all of the property, the appraisal of the property, and the payment of taxes, of inheritance taxes; then comes the third section, which refers to administration of the estate; and the fourth section refers to the

awarding of the properties, of the estate, to the lawful heirs by the Court itself.

Prior to the protocolization of the American proceedings in Mexico the executor or trustee has no standing in Mexico, and the heirs of the estate have no standing in Mexico.

Supposing a man dies intestate in the United States, owning property in Mexico, you first file in court in Mexico the death certificate, the certificates of birth, the marriage certificate and all of the documents to show the relationship of the heirs with the deceased. The other sections of the proceedings are just the same as those I mentioned in regard to a will, and in case of an intestate then the heirs elect an administrator.

The right to hold property within the prohibited zone is a personal right, and not subject to sale. That right does not pass to the heirs. But the Mexican law does not try to deprive the heirs of their lawful rights. The heirs, according to the law of 1856, could have secured their own permits, their personal permits to acquire the properties, and even after the Constitution of 1917, today, the law does not deprive the heirs of their lawful rights, but they give them only five years within which to dispose of their holdings within the prohibited zone, their real estate. I refer to Article 27 of the Constitution of 1917, and also the organic law of Fraction First.

I have examined all of defendant's exhibits in this case. Defendant's exhibit No. 2 is a decree of expropriation of certain lands comprised by the tracts of San Antonio, Vado de Piedra, El Comedor or Agua de Martin, and part of La Santisima between Presidio Viejo and Cajoncitas. In my opinion that decree of expropriation is a good and valid subsisting decree under the laws of Mexico.

The system of the Constitution of 1857 was that the

expropriation must be by a court, but the system was entirely changed by the Constitution of 1917. It reserved that practically to the administrative branch of the Government.

Under the laws of Mexico the Supreme Court of the Republic must pass upon a particular question before it actually becomes the law of the Republic.

I have here Part 2 of Volume 30 of the Judicio Semanario. The Supreme Court of the Republic has passed on that question at least five times or more or it would not appear in this section. The other reference here refers to whether indemnification should be made previously. That is another innovation of the system established by the Constitution of 1917. The old Constitution of 1857 said indemnification had to be previous, but the new Constitution just said by means of indemnification, and that does not mean necessarily that it be previous. The Supreme Court has passed on the question whether it should be previous five times or more.

Defendant's exhibit No. 4 is the application made by Mr. Mier to obtain a certain extension of land of the La Santisima. This is an application properly made, and in my opinion is a good and valid instrument under the laws of Mexico. In Mexico the filing of an application gives the applicant sole and exclusive right to obtain what he has applied for, if it is in conformity with law.

Defendant's exhibit 7 is the answer to the application and is in form required by law.

Defendant's exhibit 8 is a transfer made by the Governor of the State of Chihuahua, Francisco R. Almada, to Mr. Pascual Carlos Mier. In my opinion that is a good and valid instrument under the laws of Mexico. The value of the sale, the purchase price, is 226 pesos, the purchase price is under 500 pesos, and it was made a private instrument according to law; the signature of both

parties show consent; the acceptance of Mr. Pascual Carlos Mier of the sale is contained in clause 4. Therefore this document meets with all the requirements of the Mexican law, as to both internal elements and external form.

Defendant's exhibit 11 is the resolution of the decree of the Governor of the State of Chihuahua approving the sale applied for by Mr. Mier, and in my opinion that is a good, valid instrument under the laws of Mexico.

Defendant's exhibit No. 13 contains a ratification of the former deed, and that is a good, valid instrument under the laws of Mexico.

The instruments just shown me collectively show a good title in so far as the laws of Mexico are concerned, to the land granted under the Agrarian Law.

In my opinion the Agrarian Law of the State of Chihuahua is constitutional, and furthermore, this is the first time, in this Court, I heard the law was not constitutional.

Paragraph 7 of Article 27 of the Federal Constitution of 1917 reads: "During the next constitutional term the Congress and the State Legislatures shall enact laws within their respective jurisdictions for the purpose of carrying out the division of large landed estates, subject to the following conditions." That means the next Congress and each local Congress.

The Agrarian Law sets the limits that any particular latifundium or large estate can be. Conditions are not the same in all of the States of the Republic. It would be a very large estate in the State of Vera Cruz when it is not in Chihuahua, due largely to the fact Chihuahua is a grazing or ranching state. With the exception of the size of the latifundium or landed estate that any one State will allow the Agrarian Laws of all of the States are substantially similar.

Subdivision "a" of that same article reads: "In each State and territory there shall be fixed the maximum area of land which any one individual or legally organized corporation may own." That means any corporation, company, society may own legally.

If you have three owners of a latifundium consisting of 100,000 hectares, which is beyond the amount allowed of 40,000 under the Agrarian Law, they may not own it jointly and continue jointly to own the 100,000 hectares without subdividing it, because that is not a society. Three people would be co-ownership. A co-partnership may not own more than the part permitted under the Agrarian Law.

Subdivision (b) contemplates that the owner himself will subdivide the latifundium, and set aside to himself the part that he would be entitled to. It also provides he may then sell the excess, he could trade it for cattle if he wanted to, if the Government would approve. In case the owner should refuse or fail to make the subdivision Section "c" of that article is application, which reads: "If the owner shall refuse to make the subdivision this shall be carried out by the local Government by means of expropriation proceedings."

There is nothing in that Article 27 which contemplates or requires the State Government to set aside part of the latifundium for the owner. That is the right given by the Constitution to the owner of the large landed estate who complies with the law, and then he has the right to select a piece of land to keep for himself. In the event he does not comply with the law and subdivide it himself under the law the State expropriates the whole tract.

Subdivision "e" of that same article states: "The owner shall be bound to receive bonds as a special issue to guarantee the payment of the property expropriated. With this end in view the Congress shall issue a law au-

thorizing the States to issue bonds to meet their Agrarian obligations." There is nothing in the Constitution which prevents the States from passing their Agrarian Laws in accordance with the first paragraph there, prior to the time the National Congress gives them the power. On the contrary, Transitory Article 11 of the Constitution is mandatory, and orders that the Agrarian Laws be enacted immediately.

If it appears from the evidence that the State of Chihuahua enacted its Agrarian Laws prior to the time it had the authority to issue these special bonds that would not render the Agrarian Law unconstitutional, or any action taken under that law unconstitutional. The law empowering the State of Chihuahua to issue its Agrarian Law, to issue these bonds, was subsequent to the Agrarian Law.

ON CROSS EXAMINATION:

In order to obtain the protocolization of the deed from Davis to Shapleigh, et al, dated February 13, 1897, Mr. Shapleigh had to take the deed that was executed in El Paso to the Mexican Consul in El Paso to get him to authenticate the certificate of the notary; that he then took it to the Secretary of Foreign Relations, who authenticated the signature of the Mexican Consul, then he took it to Juarez, and appeared in the court in Juarez and made a petition before the Court in his own name that he wanted it protocolized, then the Court made an order, and then it was spread at length on the records of the notary in Juarez, and the protocolization shows that each step outlined was taken by Mr. Shapleigh and associates. I don't think that indicates the consent of the purchasers.

Nullity in our law is an action at law and also a de-

fense, what we call an exception. The action to demand nullity of a contract belongs to the parties, but the defense belongs to anybody, to any third party who is affected by the contract. We do not have a statute that after the expiration of one year that any contract cannot be attacked. Article 1787 of the Civil Code of Chihuahua of 1882 provides: "The defense of nullity of a contract is perpetual." The current Civil Code of Chihuahua has the same provision; it corresponds to Article 1542 of the current Code.

When I speak of nullity I mean entirely void; that is the rule all over the civilized world. If a contract in Mexico is not perfect it is null; if the essentials of the contract have not been complied with it is null.

If a man in Mexico buys land and there is any part of the written contract that is not perfect, no matter whether he pays the price and goes into possession of the land, he may get good title by prescription, but never gets good title under the contract.

My contention has been the consent must be expressly shown in the body of the contract, because it is a provision of law.

Prescription could not run until the permit was obtained by the vendees on August 25, 1897. At that time there was a thirty year statute of limitation provided by the Civil Code of 1882. A little over a year after that the Code of 1898 was enacted that provided for ten years prescription in good faith and twenty years in bad faith.

We have a statute that says when a man thinks he has good title, and goes into possession thinking he has good title, that constitutes good title, he can acquire dominion of the property, can acquire ownership, but in this case they had nothing because the permit issued by the Government did not correct void title.

Q How are you able to say they went into possession in bad faith when they have gone through the motions, at least, of executing a deed, paying the money, and taking possession, how can you read their minds and say it was in bad faith?

A I am not saying that they were, that if they ever took possession of the property that they acted in bad faith; further what I have said is they did not have any title at all.

Shapleigh did not get title by limitation after he had ten years possession because he had no title at all, and in those cases the law does not assume good faith. It is my contention that in this case Shapleigh and associates were not entitled to the benefit of the ten years good faith limitation statute, because there was no deed at all.

On August 25, 1917, when the twenty years limitation statute would have gone in their favor, in the meantime the Constitution of 1917 had been passed, and they were not entitled to the benefits of the twenty years statute of limitation, because the Constitution of 1917 forbids foreigners to acquire property and own property on the border.

Article 1086 of the current Code which says a just title is that which if it were not for some defect that it has would be sufficient to transfer the ownership, does not apply to this case because there is no title at all. I say this title would be just but for the defects.

I don't say that the title of Mr. Davis is defective. I say that there is no title at all. There was a document passed from hand to hand which purported to convey the title. On account of a defect I say it was not effective for the purpose.

If probate proceedings are not followed there will

be no title. An heir may acquire the same land, or the same property, by prescription, but never the transfer of the deceased to the heir, is never made if the proceedings are not complied with.

Article 3604 of the Civil Code of Chihuahua of 1898 provides: "The possession of the hereditary property is transmitted through the agency of the law to the universal executor from the moment of the death of the author of the inheritance, save as regards the provisions of Article 2068." Those are: "One of the consorts having died, the survivor shall continue in the possession and administration of the social fund, with the intervention of the executor (representative) of the will, until the partition is effected."

The State of Chihuahua in its Agrarian Law fixed the amount of 40,000 hectares that each individual may own. It is not only the excess above 40,000 hectares that is subject to expropriation; the expropriation is of the whole property, and not of an excess.

Article 46 of the Agrarian Law of Chihuahua says: "When an application has been made for a certain lot no other shall be admitted regarding the same lot until final resolution has been had with respect to the first." What the applicant shall receive is the final document containing the transfer. This is implied because it says until final resolution is made, and the final resolution to be made is either the one giving the land and ordering that the title be written and made, or deny the land if the applicant does not comply with the provisions of the land.

I have examined the deed from the Governor of Chihuahua to Mier. Retroactivity is not a matter of contract; that is a matter of law. There could not be a clause in a contract stating from which date that retroactivity of which you are speaking. I believe the Gov-

ernor delivered possession in the proceedings as of March 14, 1925.

We have no statute in Mexico which forbids a stranger to meddle with a transaction, all of the parties to which have considered for thirty-seven years was a valid, legal transaction.

(Witness excused).

DEFENDANTS RESTED.

PLAINTIFFS' REBUTTAL TESTIMONY.

• • • •

Plaintiffs offered in evidence the deposition of

ALFRED L. SHAPLEIGH,

taken before Felix Cornitius, Notary Public, City of St. Louis, Mo., on the 20th day of April, 1934:

DIRECT INTERROGATORIES.

(1) My name is Alfred L. Shapleigh, age 72 years; residence No. 6 Portland Place, St. Louis, Missouri, U. S. A., occupation merchant and banker.

(2) Born in St. Louis February 16, 1862; have lived here always; have been in business here since October, 1880.

(3) I am the sale A. L. Shapleigh named as one of the grantees in a deed dated February 3rd, 1897, from Bennett H. Davis to Thomas Ranken, Jr., A. L. Shapleigh and Charles H. Peck, to certain lands located on the right bank of the Rio Bravo or Rio Grande River in the District of Bravos in the State of Chihuahua, Republic of Mexico known by the name of "La Santisima", and

again named as one of the grantees in a deed dated February 3rd, 1897, from Bennett H. Davis to Thomas Ranken, Jr., A. L. Shapleigh and Charles H. Peck to certain tracts of land located on the right bank of the Rio Bravo or Rio Grande River in the former canton of Ojinaga in the State of Chihuahua, Republic of Mexico, said tracts being known by the names of "Vado de Piedra," "San Antonio", and "El Comedor."

(4) I knew Thomas Ranken, Jr., and Charles H. Peck; they are now dead.

(5) I am acquainted with the persons who claim to be the owners of the interests formerly owned by Thomas Ranken, Jr. and Charles H. Peck in the Mexican properties hereinbefore named, all who are now living.

(6) If you have answered the last preceding interrogatory in the affirmative then give the names and addresses of the claimants.

(Objected to by defendant; sustained; plaintiffs excepted).

(7) I am familiar with a purported expropriation proceeding whereby the Government of the State of Chihuahua, Republic of Mexico, attempted to divest the title of the American owners in the Mexican properties named.

(8) No compensation was ever paid or tendered me for my Mexican interests so attempted to be expropriated.

(9) None of the co-owners of interest in the Mexican properties mentioned have been paid or tendered any indemnification on account of said attempted expropriation proceeding.

(Defendant moved to strike the answers to the interrogatories because not rebuttal; the Court overruled the

motion except as to answer to No. 6, which was sustained).

Recess from 4:50 P. M. to 9:30 A. M., November 3, 1934.

Plaintiffs offered, over objection of defendants that same was not rebuttal, answers to cross interrogatories:

1 (a) I was not notified of said expropriation proceeding until after the publication of the decree of the Governor of Chihuahua that the lands had been expropriated.

(Objection sustained to above).

(b) I was not given any opportunity to appear in the said expropriation proceeding either in person or by attorney.

3. (a) I first learned of said expropriation proceeding through the publication of the decree in the official newspaper of the State of Chihuahua on March 7, 1925, copy of which was sent to me through Mr. Delbert J. Haff.

(b) On August 22, 1925, I and my associates presented a petition to the Governor of Chihuahua, through our attorney, Delbert J. Haff, asking that the decree of March 5, 1925, be revoked.

4. I am acquainted with Attorney Delbert J. Haff. I have met Attorney Antonio Horcasitas.

(a) Attorney Delbert J. Haff filed the petition mentioned in Answer 3 (b).

(b) Delbert J. Haff was employed to represent myself and associates in filing the petition above referred to.

(c) Delbert J. Haff was employed to file the petition

of August 22, 1925, above referred to. His employment still continues.

(5) It is not a fact that I and my associates, who were claimants of the land described in Direct Interrogatory No. 3, or my legal counsel, attorneys or representatives, were required and notified by the Mexican authorities to present certain proofs and certain official documents necessary to prove or to perfect title to said lands.

(The remainder of the answer was objected to by defendant; for reason it undertakes to be legal and expert testimony, and the witness has shown he is not a lawyer; objection sustained; plaintiffs except; said portion of the answer being as follows: There was no necessity for proving or perfecting title to the said lands as the deeds thereto were matters of official record, the deed of transfer from Bennett H. Davis of February 13, 1897, having been protocolized and registered at C. Juarez, Chihuahua, on December 2, 1897).

(a) Neither I, nor my associates or counsel received any orders or notice from the State authorities of Chihuahua prior to the publication of the decree of March 5, 1925, in the official newspaper of the State of Chihuahua on March 7, 1925, which purported to expropriate the whole of the "La Sanitsima" tract.

(6) No answer was ever given by the Governor to the foregoing petition or action taken thereon.

(a) It is not a fact that I and my associates, or their legal representatives, counsel or attorneys, were granted more than one extension of time, in order to comply with the official requirements to show, or perfect title in myself or my associates.

(b) As already stated, I was under no obligation to meet any official requirements to show or perfect title in myself or associates.

(7) As the first official action of the Governor of Chihuahua which affected the "La Santisima" tract and particularly the town of "El Porvenir", near which is located the banco Guayuco, was the decree of March 5, 1925, I had no occasion to address the Governor regarding this tract. My first communication after the said decree was that of August 22, 1925.

(a) My attorney, D. J. Haff, filed with the petition of August 22, 1925, blueprints of tracts of land known as "La Santisima", "San Antonio", "El Comedor", and "Vado de Piedra".

(8) It is not a fact that on or about the 8th day of June, 1923, I and Messrs. Peck and Ranken, through our attorneys, or one of them, presented a memorial to the State authorities of the State of Chihuahua, agreeing to comply with the Agrarian Law with reference to the sub-division of the properties referred to. But in the petition of August 22, 1925, presented by my attorney, D. J. Haff, to the Governor of Chihuahua, I did agree to try to comply with the Agrarian Law of the State.

(a) As no answer was made by the Governor to my petition of August 22, 1925, no opportunity was ever given to comply with the law of the State.

(9) I was acquainted with the corporation or partnership known as the Rio Bravo Land & Cattle Company.

(a) It was a corporation.

(e) This company was organized by the owners to acquire the land, but they found out that an American

corporation could not take title to the land on the frontier zone, and consequently their agent, who had acquired the legal title to the land for them, executed a deed in which he recited the fact that this company had been organized, that it could not acquire the legal title and that, therefore, he conveyed the land to the individuals in undivided interests, which he described in the deed. The deed, however, conveys the land flatly to Chas. Davis, Alfred L. Shapleigh, Chas. H. Peck and Thomas Ranken, Jr., and John J. O'Fallon.

(10) It is not a fact that during the course of said expropriation proceedings the officials of the State of Chihuahua demanded of me and Messrs. Peck and Ranken, or our attorneys or counsel, that I or they furnish evidence as to whether the tracts of land which are described in Direct Interrogatory, were held in ownership by Messrs. A. L. Shapleigh, Charles H. Peck and Thomas Ranken, Jr., or whether the title to said lands, or any of them, was vested in the Rio Bravo Land & Cattle Company.

11. (a) It is not a fact that I and Messrs. Peck and Ranken withdrew from, or abandoned said expropriation proceeding, and failed and refused to supply evidence of title or ownership in said lands to the Governor of the State of Chihuahua, or to any other official of said state.

(b) In the petition of August 22, 1925, to the Governor of Chihuahua, referred to above, it was pointed out by my attorney, D. J. Haff, that the expropriations and sub-divisions which are made for reasons of public utility must be on the basis of the corresponding indemnification, and that the third point or paragraph of the decree of the 5th of March, 1925, ordered that indemnifi-

cation may be made when the Agrarian Debt of the State is created, which is an open contradiction to the provision of paragraph 2nd of Article 27 of the Constitution of Mexico.

(c) Neither I or any of us ever agreed or offered to accept compensation or indemnification under the Agrarian Law of the State of Chihuahua. No compensation was ever made or tendered to me or any of my associates or attorneys.

(d) In the petition of August 22, 1925, we offered to sell to the Federal of State Government all of the lands. No answer was made by the Governor to the petition, although under Article 8 of the Constitution of 1917 a written answer is required to every petition by the official to whom it may be addressed.

(12) It is not a fact that we withdrew from or abandoned participation in any expropriation proceedings, as we had never been made parties to any such proceedings, which were wholly ex parte and consisted solely of the issuance of the decree of the Governor of March 5, 1925, expropriating all of our lands. It is true that we filed a claim before the General Claims Commission, United States and Mexico.

(a) A Memorial was filed with the General Claims Commission, Docket No. 3084, asking for the immediate restoration of the property in its entirety, as provided in Article IX of the Convention of September 8, 1923, and allowing damages by way of interest upon the value of the property from the date of ouster of possession to the date of the actual restoration of the property.

(b) Copy of Memorial, Docket No. 3084, attached. (Same was read to the Court).

(12) The claim now pending before the General Claims Commission is for restoration of the property.

(a) The Memorial was filed but the claim was never heard or decided by the Commission.

(b) The Commission rendered its last decision in July, 1931, and disbanded. The treaty expired in August, 1931.

GILBERTO VALENZUELA,

was recalled by Plaintiffs, and further testified, through the interpreter, as follows:

ON REDIRECT EXAMINATION:

I have reached the conclusion, firm and definite, that the sale executed by Bennett H. Davis in 1897 in favor of Shapleigh and his associates, with respect to the lands of Santisima, is perfectly legal and valid in the light of the Mexican law.

The objections presented by the other side are the title in question lacks the form established by the Civil law of Chihuahua, second, in the documents in question there does not appear the acceptation of the sale by the purchasers; third, consent of the parties does not appear; and, fourth, the capacity of one of the contractors to carry this contract into effect was illegal.

Article 13 of the Civil Code of Chihuahua, 1882, is applicable to the case: "The laws concerning the status and capacity of persons are obligatory on the Mexicans of the State, even though they reside in a foreign country, with respect to the acts that should be executed in whole or in part in the said demarkation." (The witness read Article 14, Article 15, Article 17 and Article 18, as hereinbefore set out).

Article 70 of the Code of 1882 says: "In order to establish the civil status of Mexicans born, recognized and subject to guardianship, emancipated, married, or dead, outside of the Republic the records of these acts that shall be presented by the interested parties shall be sufficient provided they may be in accordance with the laws of the State where they occurred, and that they should appear in the civil registry of vital statistics in the state."

Article 3834 says wills executed in foreign countries shall produce effect in this State when they shall have been drawn authentically, according to the laws of the country in which they were executed.

From the prescriptions contained in these articles it appears clear and categorically that notwithstanding the absolute provision of Article 13, that everything concerning the state of capacity of the persons shall be governed by the laws of the State. If the provisions of Article 13 is not then an exception to the general rule of Article 15 there is no logical nor legal reason to establish that the provision of Article 14, which is exactly in the same condition as 13 as much in its wording as in its situation, can be an exception to Article 14, as was stated here by the lawyers of the defense.

Article 15 speaks of external solemnities of contracts, testaments, and other juridical acts. Articles 17 and 18 speak of and refer to internal solemnities from which we may deduce that the law is established expressly; a division in the solemnity of juridical acts consisting in external solemnities or formal, and internal solemnities or essentials.

(The witness referred to a commentary by Augustin Verdugo, being Mexican Civil Law by Agustin Verdugo, published in 1885, reading from page 117, 119).

It is proper to apply these articles duly interpreted

to the case, and in making that application of them as a conclusion, as an inevitable conclusion, that the transfer executed by Bennett H. Davis in favor of Shapleigh and associates is perfectly legal, because it is in accord with the very law of the State of Chihuahua which establishes that the forms and external solemnities and forms of that act are governed by the law of Texas. It follows that it is not necessary to execute the two private instruments prescribed by the law of Chihuahua in the form and terms established by said law, and that the consent of the parties in this case has been set forth in the form and terms prescribed for that effect by the very Code of Chihuahua.

With regard to consent, it once being established, as it has been eloquently, that everything relative to the form and external solemnities of the contract is governed by the laws of Texas all legal provision contained in the State of Chihuahua with respect to this point has no application to this case. Consequently any provision as to form is resolved wholly with respect to the consent, Article 1403 of the Chihuahua Code of 1882: "The showing of consent shall be made by word, by writing or by acts through which it shall be necessarily presumed." In conformity with this legal provision the State of Chihuahua does not claim nor exact that a contract, consent should be expressed in detail, when it can be presumed. In fact, whenever there is a seller, a buyer, a thing, and a price there is consent. The consent between the seller and the purchaser with respect to the price and the thing. Therefore the contract complies in all of its parts with the provisions of the Code of Chihuahua in this respect.

With reference to the lack of acceptance by the purchaser this provision is not applicable to the case because the consent should be executed in the form which is legal, accustomed and valid in the place where the con-

tract is executed, and in this case if the contract is sufficient to transfer dominion in Texas it as also enough to transfer dominion in Mexico.

The objection set forth by the lawyers for the defense in regard to lack of capacity consists in that the purchasers violated the provisions contained in the law of the 1st of February, 1856, which provides that no foreigner can, without previous permit from the Supreme Government, acquire real estate in the states or in the frontier states or territories, except at twenty miles from the frontier. In order to answer this objection we should take into account that the law cited does not contain any position, any sanction, and the sanction which according to Attorney Miranda appertains thereto in trying to apply to the case the Civil Code of Chihuahua, is entirely important because a Federal law of public right cannot be regulated nor sanctioned by a local law of the State jurisdiction, which provides only for the several relations of private persons. In order that this law should have an effective sanction it is necessary that a Federal law of public interest should have established the sanction of nullity. In Mexico there are no nullities except those expressly established by the law. In this case the lawyers of the defense have not presented and Federal law which establishes the pain of nullity if the permit should have been given after the contract had been executed. There cannot be in this case any nullity. The execution of the permit by the Federal Government after the contract had been executed contains the effects of a ratification or confirmation of the same. The law of the 1st of February, 1856, is not in force. This law was repealed by the organic statute enacted on the 23rd day of May, 1856, by the Government of General Comonfort. The fifth article of this statute sets forth the ex-

ercise of civil rights is independent of the nullity of citizenship.

Article 3372 of the Civil Code of Chihuahua of 1882 says: "Property. A legal possession of the property, ownership and legal possession of the properties and the rights and obligations of the author of the inheritance are transmitted by the death of him to his heirs in the terms established in this book." In conformity with this legal provision, and considering also the provision of Article 3367, which says that the heir represents the person of the author of the inheritance, the lack of the probate proceedings does not affect the essence of the rights of property and possession, and the probate proceedings have for an immediate object that the courts of Mexico and the corresponding authority should recognize these rights for the benefit of the interested parties, and for the knowledge of third persons.

With reference to the claim of defense attorneys that the deed from the Governor of Chihuahua to Mier had the force of retroactivity, I am in absolute disagreement with that opinion. Attorney Mena Castillo said here expressly that the execution of the deed of conveyance in the case was the necessary result of the whole proceeding, the whole public proceeding which was established in the case of the Agrarian Law of the State of Chihuahua. In agreement with the provisions of that law, when a petition has been filed for the acquisition of lands none other shall be received until the first has been decided. This provision establishes only and exclusively a right of preference for the first petitioner with respect to those who might come after, and have a right of hope for the possibility to obtain the title if in the proceedings of the petition there is not a decision contrary to the interests of the petitioner. The Agrarian Law establishes that provisional possession be given by

the municipal president of the jurisdiction or by the Agrarian Delegate. This provisional possession should be ratified or corrected by the executive of the State, and he has the right to deny the confirmation of the provisional possession. Article 50 of the Agrarian law establishes if the executive should not confirm the provisional possession the petitioner who shall have received this must leave the land, paying the rent that would be due either to the owner of the land or to the Government. These provisions of the law clearly establish that the transfer of dominion is in no manner the character of retroactivity because it is subordinated to compliance or non-compliance with different conditions established by the same Agrarian Law.

At the time the deed was executed the Constitution of 1857 was in effect. The Constitution of 1857 has no provision regarding permits to foreigners being granted before the deed was executed; on the contrary in its Article 33 it expressly establishes that foreigners shall enjoy in Mexico all the individual guarantees established by the Constitution from Article 1 to Article 29, and shall enjoy those guarantees in equality of conditions with Mexicans. The Constitution of 1857 initiated a new era in the public life of Mexico, establishing radical changes in all social institutions, and political, and regulating the juridical condition of foreigners with the opinion much more liberal than all the former laws given on this point.

Whenever an ordinary law of the Federation or of the States shall be contrary to any of the provisions of the Constitution the courts of all the country, Federal as well as State, must apply the Constitution and not the law that is at counter-position.

It is my opinion that when the experts for the defendant said there was a disability on the part of Shapleigh, Ranken and Peck to contract, because they didn't have

a permit at the time they bought the land, and at the time of the execution of the deed, that is in error for the reasons I have given.

I am also wholly in disagreement with the opinion of the experts for the defendant when they expressed the opinion that each and every muniment of title exhibited by the defendant was valid and regular, and, taken together, they were sufficient to vest title in El Guayuco Banco to the defendant. The title that was presented in this case by the defendant has substantial defects which, in my opinion, take from it all legal validity.

(Witness excused).

RICHARD F. BURGES,

was sworn as a witness for defendant, and testified:

ON DIRECT EXAMINATION:

I am Richard F. Búrges, a resident of El Paso, El Paso County, Texas, and have been since 1892.

I knew Major Bennett H. Davis well during the last five years of his life. He is dead. He died some time during the month of May, 1897. I was present at his funeral.

(Witness excused).

Defendant read Article 1402 of the Civil Code of Chihuahua of 1882, as follows:

"The consent of those who contract must be clearly shown."

Also Article 1404: "He only who has a physical inability to speak or write can express his consent by other unquestionable signs."

TESTIMONY CLOSED.

The case was taken under advisement by the Court, and thereafter decision was rendered by the Court in favor of defendant against plaintiffs, per Findings of Fact and Conclusions of Law filed herein; to which action of the Court plaintiffs excepted.

SHORTHAND REPORTER'S CERTIFICATE.

* * * *

I, Roy Lasseter, Shorthand Reporter, United States District Court, Western District of Texas, El Paso Division, hereby certify that I reported the testimony and proceedings in the case of A. L. Shapleigh, et al, vs. Pascual C. Mier, No. 1650 Law; that the foregoing is a full, true and correct statement of the evidence and bill of exceptions on all material points necessary for appeal of said case, as reflected by the record in said case.

Witness my hand at El Paso, Texas, this the 18th day of September, A. D. 1935.

ROY LASSETER,
Shorthand Reporter.

AGREEMENT OF COUNSEL.

We, the undersigned attorneys of record in said case, hereby agree that the foregoing together with original exhibits transmitted under order of Trial Court, is a full, true and correct transcript of evidence and bill of exceptions on all material points raised by plaintiffs on appeal of this case, and hereby approve said record as the transcript of evidence and bill of exceptions in said case.

Witness our hands at El Paso, Texas, this the 19th day of October, A. D. 1935.

McKENZIE & GAMBLE

By H. R. GAMBLE
Attorneys for Plaintiffs.

RICHARD F. BURGES
WALTER S. HOWE
Attorneys for Defendant.

APPROVAL OF THE COURT.

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The above and foregoing record on pages numbered 1 to 410, having been approved by counsel for the respective parties to said cause, and having been examined and found correct, same is hereby approved as the transcript of evidence and bill of exceptions in the case of A. L. Shapleigh, et al, vs. Pascual C. Mier, No. 1650 Law, United States District Court in and for the Western District of Texas, El Paso Division thereof; and is hereby approved and ordered filed as a part of the record in said cause.

Witness my hand at El Paso, Texas, this the 21st day of October, A. D. 1935.

CHARLES A. BOYNTON,
United States District Judge.

Plaintiffs' Translation of Mexican Laws.

TRANSLATION OF PORTIONS OF THE FEDERAL CONSTITUTION OF MEXICO OF 1857.

Article 1. The Mexican people recognize that the rights of man are the basis and the object of social institutions. Consequently they declare that all the laws and all the authorities of the country must respect and maintain the guarantees which the present constitution grants.

Article 14. No retroactive law shall be enacted. No person shall be tried or sentenced except under laws previously enacted, exactly applicable to the case, and by a tribunal previously established by law.

Article 16. No one shall be molested in his person, family, domicile, papers or possessions, except by virtue of an order in writing of the competent authority, setting forth the legal grounds upon which the measure is taken. In cases *in flagrante delicto* any person may apprehend the offender and his accomplices, placing them without delay at the disposel of the nearest authorities.

Article 27. Private property shall not be taken without the consent of the owner, except for reasons of public utility, indemnification having been made. The law shall determine the authority to make the expropriation and the conditions on which it shall be carried out.

No religious corporations and institutions of whatever character, denomination, duration or object, nor civil corporations, when under the patronage, direction or administration of the former, or of ministers of any creed shall have legal capacity to acquire title to, or administer, real property, other than the buildings imme-

diately and directly destined to the services or purposes of the said corporations and institutions. Nor shall they have legal capacity to acquire or administer loans made on such real property.

Civil corporations and institutions not comprised within the above provision, may acquire and administer, in addition to the buildings mentioned, real property and loans made on such real property required for their maintenance and purposes, subject to the requisites and limitations to be established by the Federal law to be enacted by the Congress on the subject. (As amended, May 14, 1901)

Article 33. Aliens are those who do not possess the qualifications prescribed by Article 30. They shall be entitled to the guarantees granted by Section I, Title I, of the present Constitution, except that in all cases the Government has the right to expel undesirable foreigners. They are under obligation to contribute to the public expenses as the law may provide, and to obey and respect the institutions, laws, and authorities of the country, subjecting themselves to the decisions and sentences of the tribunals, and shall not be entitled to seek other redress than that which the laws concede to Mexicans.

Article 126. This Constitution and the laws of the United States of Mexico which shall be made in pursuance hereof and all treaties made or which shall be made under the authority of the President of the Republic, with the approval of the Congress, shall be the supreme law of the land. And the judges in every State shall be bound by this Constitution and by these laws and treaties, anything in the Constitution or laws of any State to the contrary notwithstanding.

TRANSLATION OF PORTIONS OF THE FEDERAL CONSTITUTION OF MEXICO OF 1917.

Article 1. Every person in the United States of Mexico shall enjoy all guarantees granted by this Constitution; these shall neither be abridged nor suspended except in such cases and under such conditions as are herein provided.

Article 14. No law shall be given retroactive effect to the prejudice of any person whatsoever.

No person shall be deprived of life, liberty, property, possessions or rights without due process of law instituted before a duly created court, in which the essential elements of procedure are observed and in accordance with perviously existing laws.

In criminal cases no penalty shall be imposed by mere analogy or even by a priori evidence, but the penalty shall be decreed by a law in every respect applicable to the crime in question.

In civil suits the final judgment shall be according to the letter or the juridical interpretation of the law; in the absence of the latter, the general legal principles shall govern.

Article 16. No one shall be molested in his person, family, domicile, papers or possessions, except by virtue of an order in writing of the competent authority setting forth the legal ground and justification for the action taken. No order of arrest or detention shall be issued against any person other than by competent judicial authority, nor unless preceded by a charge, accusation or complaint for a specific offense punishable by imprisonment, supported by an affidavit of a credible party or by such other evidence as shall make the guilt of the

accused probable; in cases *in flagrante delicto* any person may arrest the offender and his accomplices, placing them without delay at the disposition of the nearest authoirties. Only in urgent cases instituted by the public attorney without previous complaint or indictment and when there is no judicial authority available may the administratrive authorities, on their strictest accountability, order the detention of the accused, placing him at the disposition of the judicial authorities. Only in urgent cases instituted by the public attorney without previous complaint or indictment and when there is no judicial authority available may the administrative authorities, on their strictest accountability, order the detention of the accused, placing him at the disposition of the judicial authorities. Every search warrant, which may only be issued by the judicial authority and which must be in writing shall specify the place to be searched, the person or persons to be arrested and the objects sought, to which the proceeding shall be strictly limited; at the conclusion of which, a detailed written statement shall be drawn up in the presence of two witnesses proposed by the occupant of the place to be searched, or, in his absence or refusal, by the official making the search.

Administrative officials may enter private houses solely for the purpose of determining that the sanitary and police regulations have been complied with; they may likewise demand the exhibition of books and documents necessary to prove that the fiscal regulations have been obeyed, subject to the respective laws and to the formalities prescribed for cases of search.

Article 27. The ownership of lands and waters comprised within the limits of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting private property.

Private property shall not be expropriated except for reasons of public utility and by means of indemnification.

No State shall —

Article 117. I. Enter into alliances, treaties or coalitions with another State or with foreign powers.

II. Grant letters of marque or reprisal.

III. Coin money, issue paper money, stamps or stamped paper. (As amended May 1, 1896.)

IV. Levy taxes on persons or property passing through its territory. (As amended May 1, 1896.)

V. Prohibit or tax, directly or indirectly, the entry into its territory, or the withdrawal therefrom, of any merchandise, foreign or domestic. (As amended May 1, 1896.)

VI. Burden the circulation or consumption of domestic or foreign merchandise with taxes or duties to be collected by local custom houses or subject to inspection the said merchandise or require it to be accompanied by documents. (As amended May 1, 1896.)

VII. Enact or maintain in force laws or fiscal regulations discriminating, by taxation or otherwise, between merchandise, foreign or domestic, on account of its origin, whether this discrimination be established with regard to similar local products or to similar products or foreign origina. (As amended May 1, 1896.)

VIII. Issue bonds of the public debt payable in foreign coin or outside the Federal territory; contract loans, directly or indirectly, with any foreign government, or assume any obligation in

favor of any foreign corporation or individual, requiring the issuance of certificates or bonds payable to bearer or negotiable by endorsement. The Federal Congress and the State Legislatures shall forthwith enact laws against alcoholism.

Article. 133. This Constitution and the laws of the United States of Mexico which shall be made in pursuance hereof and all treaties made or which shall be made under the authority of the President of the Republic, with the approval of the Congress, shall be the supreme law of the land. And the judges in every State shall be bound by this Constitution and by these laws and treaties, anything in the Constitution or laws of any State to the contrary notwithstanding.

TRANSLATION OF PORTIONS OF THE CIVIL CODE OF CHIHUAHUA OF 1882, KNOWN AS THE OLD CODE.

Art. 7. The acts executed against the tenor of prohibitive laws shall be null if the said laws do not otherwise provide.

Art. 13. The laws concerning the state and capacity of persons are obligatory for the Mexicans of the federal district and of California, even when they reside in a foreign country, in respect to the acts which must be executed in the whole or in part of the mentioned demarkations.

Art. 14. In respect to the immovable property situated in the federal district, and in California, the Mexican laws shall govern, although it may be possessed by foreigners.

Art. 15 In respect to the form or external soleminities

of contracts, wills, and all other public instruments, the laws of the country in which they shall have been executed shall govern. Notwithstanding, Mexicans or foreigners residing out of the district, or out of Cailfornia, are at liberty to subject themselves to the forms and soleminities prescribed by the Mexican law in the cases in which the act must be executed in those demarkations.

Art. 17. The obligations and rights which may arise fro[illegible]ontracts or wills executed in a foreign country by Mexicans of the district, and of California, which shall be governed by the provisions of this code, in case that said acts must be fulfilled in the said demarkations.

Art. 18. If the contracts or wills of which the preceding article speaks should be executed by a foreigner, and should have to be executed in the district of California, the maker shall be free to elect the law which the internal soleminity of the act may have to be subject to, as to the interest which may consist of movable property. As to what respects real estate, the provision in article 14 shall be observed.

Art. 919. Possession is the tenancy of a thing or the enjoyment of a right by ourselves or by another in our name.

Art. 920. The possession, as a means of acquiring, is either in good or bad faith.

Art. 921. Those who are capable of acquiring are capable of possessing. Incapacitated persons possess through the means of their legitimate representatives, in conformity with the law.

Art. 922. The possessor has in his favor the presumption of possessing for himself.

Art. 923. He who possesses in the name of another is not the possessor in law.

Art. 924. It is presumed that he who commenced to possess in the name of another continues possessing in the same character.

Art. 925. Possession gives to him who has it the presumption of proprietorship for all legal effects.

Art. 926. The actual possessor who proves he has possessed in a former time has in his favor the presumption of having possessed in the intermediate time.

Art. 927. He who possesses or fundamentally believes he possesses in virtue of a title sufficient to transfer the dominion is a possessor in good faith.

Art. 928. He is also a possessor in good faith who is ignorant of the viciousness of his title. Ignorance is presumed in this case.

Art. 929. He who possesses knowing he has no title, he who without any grounds believes he has a title, and he who knows that his title is insufficient or vicious, are possessors in bad faith.

Art. 930. The possessor has in his favor the presumption of possessing in good faith, save the provision in article 959.

Art. 931. The possessor in good faith makes the fruits he receives his while the good faith is not interrupted.

Art. 932. Good faith is interrupted by the same means as prescription, in conformity with what is provided in article 1232.

Art. 933. By the suspension of good faith the possessor does not lose the right of receiving the fruits, only in the cases expressly determined in the laws; but

he is obliged to return those which he may have received after that, or their value, if it shall be declared by a final judgment that he possessed in bad faith.

Art. 934. Natural or industrial fruits are understood as received from the time they are gathered or separated. Civil fruits are produced day by day, and belong to the possessor in this proportion, as soon as they are due, although they may not have been received.

Art. 935. The possessor in good faith has a right to a credit for the expenses made by him for the production of the natural and industrial fruits, which do not become his on account of being pending at the time of the interruption of the possession.

Art. 936. He has also a right to legal interest on the amount of the expenses from the day on which they have been respectively made, to that on which the payment thereof shall be made.

Art. 937. A possessor in bad faith, whenever he has acquired the tenancy by robbery, is obliged to restore all the fruits which the thing has produced, and those which it has failed to produce by the culpable omission of the possessor in the ordinary cultivation of the estate.

Art. 938. A possessor in bad faith, who has acquired the tenancy by a title translative of the dominion, will only be obliged to restore the fruits which he has received; and he will have no responisbility for those which the estate or thing might have produced, unless he shall have acquired the thing sold knowingly by force or fear, or against the prescriptions of this code; since in these cases the possessor in bad faith

is considered the same as he who acquires the thing by robbery.

Art. 939 Every possessor ought to be credited with the necessary expenses; but only he who of good faith has a right to retain the thing until the payment thereof is made.

Art. 940. A possessor in good faith ought to be credited with the useful expenses; and he also has a right to retain the thing until the payment thereof be made.

Art. 941. A possessor in bad faith may withdraw the useful improvements if the owner does not pay him for them, and they can be separated without detriment from the thing improved.

Art. 942. The voluntary expenses are not to be credited to any possessor; but the possessor in good faith may withdraw these improvements, if no detriment is caused thereby to the thing improved, or by repairing the detriment thereby caused, in the judgment of experts.

Art. 943. Necessary expenses are those which are prescribed by law, and those without which the thing would be lost or damaged.

Art. 944. Useful expenses are those which, without being necessary increase the price or product of the thing.

Art. 945. Voluntary expenses are those which serve only as an ornament to the thing, or as a pleasure or convenience to the possessor.

Art. 946. The possessor ought to prove the amount of the expenses to which he has a right. In case of doubt, they will be taxed by the means of experts.

Art. 947. When the possessor ought to be indemnified

for expenses, and has received fruits to which he had no right, there shall be compensation.

Art. 948. The improvements or increase in value proceeding from nature or time always belong to the proprietor.

Art. 949. A possessor in good faith shall not respond for the deterioration or loss of the thing possessed, although they may have occurred by his own act; but he shall respond for the profit which he himself may have obtained from the loss or deterioration.

Art. 950. A possessor in bad faith shall respond for all loss or all deterioration which may have happened through his fault or by a fortuitous case, unless he shall prove that this would have taken place if the thing had been possessed by the owner.

Art. 951. Neither shall he respond for the loss which naturally and inevitably happens solely through the course of time.

Art. 952. Possession is lost: 1. By the abandonment thereof; 2. By concession with an onerous or gratuitous title; 3. By the destruction or loss of the thing, or by its being out of commerce.

Art. 953. Possession is also lost when another possesses the thing for more than a year, which shall be counted from the day on which the new possession publicly commenced, or from that day on which notice thereof reached him who possessed prior thereto, if the new possession commenced secretly.

Art. 954. Possession is transmissible by inheritance; the heirs of the possessor continue the possesion commenced by him.

Art. 955. A possessor has a right to be maintained in his possession, whenever he shall be disturbed in it.

Art. 956. A possessor has a right to be restored to his possession, if he requires it, within a year, counted in conformity with the provision in article 953.

Art. 957. If the possession is less than a year, no one can be judicially maintained in or restored to the same, except against those whose possession shall be no better.

Art. 958. A possession credited with a legitimate title is better than any other; for want of this, or the titles being equal, the oldest shall be preferred; if both possessions should be doubtful, the thing in litigation shall be placed in trust.

Art. 959. Bad faith is always presumed in him who ejects another forcibly from the possession in which he is found.

Art. 960. He who was judicially maintained in or restored to the possession if a thing is never reputed as disturbed or despoiled thereof.

Art. 961. He who has judicially been maintained in the possession, or restored to it, has a right to be indemnified for the losses which may have followed him thereby.

Art. 962. In the cases comprehended in articles 922, 924, 925, 926, 928, 930, and 959, the presumption will subsist until the contrary shall be proved.

Art. 1165. Prescription is a means of acquiring the dominion of a thing, or of freeing one's self from a charge or obligation, by virtue of the course of certain time, and under the conditions established by law.

Art. 1166. The acquisition of things or rights in virtue of possession is called positive prescription; the exoneration of obligations by not requiring their fulfillment is called a negative prescription.

Art. 1167. The things, rights, and obligations which are in commerce can only be prescribed, save the exceptions established by law.

Art. 1168. All those who are capable of acquiring by any other title can acquire by positive prescription; minors and others incapacitated can do so by means of their legitimate representatives.

Art. 1169. Negative prescription avails all, even those who by themselves can not be obligated.

Art. 1170. The right of acquiring by positive prescription can not be renounced beforehand.

Art. 1171. The right of freeing one's self from an obligation by negative prescription may be renounced, but the renunciation will only produce the effect of duplicating the terms, provided that, being duplicated, they shall not exceed in any case thirty years. The terms shall be counted from the day on which the renunciation has been made.

Art. 1172. The prescription which has commenced to run, and that already consummated, may be renounced; but in these cases the renunciation must be considered as a true donation of the rights which in each one of them may have been acquired, and will be subject to the rules established for that contract.

Art. 1173. The renunciation of prescription is express or tacit, this latter being that which results from an act which imports the abandonment of the right acquired.

Art. 1174. He who can not alienate can not renounce a prescription pending nor that which is consummated.

Art. 1175. The creditors, and all those who may have a legitimate interest in what the prescription subsists, can make it available, although the debtor or the proprietor may have renounced the rights acquired in its virtue.

Art. 1176. He who possesses in the name of another can not acquire by prescription the thing possessed, unless the cause of the possession has been legally changed.

Art. 1177. The cause is said to be legally changed when he who possesses in the name of another commences to possess in good faith and with a just title in his own name; but in this case the prescription does not run, only from the day on which the cause has been changed.

Art. 1178. If various persons possess in common anything, neither of them can prescribe against his co-proprietor or co-possessor; but he may prescribe against a stranger; and in this case the prescription avails all the participants.

Art. 1179. The exception which by prescription a co-debtor *in solidum* acquires does not avail the others, only when the time required by law has duly run in the same manner for all of them.

Art. 1180. In the case provided by the preceding article the creditor can only require of the debtors who do not prescribe the value of the obligation, deducting the part which corresponds to the debtor who prescribed.

Art. 1181. The prescription acquired by the principal debtor always avails his sureties.

Art. 1182. The prescription once perfected can be deduced as an action and be opposed as an exception.

Art. 1183. The judges can not officially consider prescription.

Art. 1184. The Union, the District, and California, in their cases, as well as the ayuntamientos, and all public establishments, and moral persons (companies or corporations), shall be considered as private individuals for the prescription of their properties, rights, and actions, which may be susceptible of being private property.

Art. 1185. He who prescribes may complete the necessary term for his prescription, by uniting with the time which he may have possessed that which the person who transmitted the thing to him possessed, provided that both possessions have the legal requisites.

Art. 1186. The possessions of this title, relative to the time and other necessary requisites for prescription, shall only fail to be observed in the cases in which the law expressly provides otherwise.

Art. 1187. The necessary possession in order to prescribe must be: 1. Founded on a just title; 2. Of good faith; 3. Pacific; 4. Continuous; 5. Public.

Art. 1188. That which is sufficient to transfer the dominion is called a just title.

Art. 1189. He who alleges prescription must prove the existence of the title on which his right is founded.

Art. 1190. Good faith is only necessary at the moment of acquisition.

Art. 1191. Pacific possession is that which is acquired

without violence; useful possession commences only after it has beeun juridically declared that violence has ceased.

Art. 1192. Continuous possession is that which has not been interrupted in any of the modes enumerated in chapter 7 of this title.

Art. 1193. Public possession is that which is enjoyed in a manner which may be known by those who have interests in interrupting it.

Art. 1194. All immovable properties are prescribed with good faith in twenty years, and with bad faith in thirty; save what is provided in article 1176.

Art. 1195. In the same terms, and with the same conditions which the preceding article establishes, real rights and actions are acquired by prescription, including those of voluntary servitudes.

Art. 1219. Prescription may commence and run against any person, save the following restrictions:

Art. 1220 Prescription can not commence nor run against minors, and those incapacitated for want of intelligence, only when their guardianship has been appointed in conformity with the laws.

Art. 1221. The prescription of twenty years only runs against a minor, if they have commenced to run against the person from whom the minor inherits, or from whom he has had the thing by another legal title.

Art. 1222. Said prescriptions do not run against a minor if they have commenced to run dierctly against him during his minor age.

Art. 1223. The prescriptions of more than twenty years run against one of eighteen years of age.

Art. 1224. In the case of the article 1221, the minor may, within the legal term of four years, ask restitution from the time which has run against him, but not from that which has run against the persons from whom he received the property (causante).

Art. 1225. In the case of the article 1222, the minor can ask restitution from the time which has run during his minor age.

Art. 1226. In the case of the article 1223, the minor can only ask restitution from the time which has run up to the completion of the age of eighteen years.

Art. 1227. Prescription does not run against those who are incapacitated for want of intelligence, unless it has commenced to run against their persons from whom they received the property (causantes), or against themselves before their impediment.

Art. 1228. The person incapaciated can only ask restitution from the time the impediment ended.

Art. 1229. Any prescription runs against the prodigal, but his rights shall remain safe against his tutor.

Art. 1230. Prescription can not commence nor run: 1. Between ascendants and descendants during the parental power (patria potestad), in respect to the properties to which the latter may have a right in conformity with the law; 2. Between consorts; 3. Between minors and persons incapacitated, including prodigals, and their tutors and curators, while the tutelage lasts; 4. Against those absent from the district and from California, in the public service; 5. Against military persons in active service in time of war, as well out of the district and California as in them.

Art. 1231. Neither can prescription commerce nor run between a third party and a married woman: 1. In respect to dotal properties, unless it has commenced before the marriage; 2. In respect to immovable properties of the matrimonial estate, alienated by the husband without the consent of the wife, but only the part of the properties which belongs to the wife; 3. In the cases in which the action of the wife against a third person may have reversion against the husband.

Art. 1232. Prescription is interrupted: 1. If the possessor is deprived of the possession of the thing, or of the enjoyment of the right during a year; 2. By a judicial demand, the possessor being notified, or the debtor in his case, or by attachment, save if the creditor desist from the action instituted or the defendant should be absolved from the demand, or the judicial act should be null for want of formality (solemnidad); 3. By citation for a conciliatory act, judicial protest, or the securing of properties made in virtue of a precautionary decree, from the day on which these acts occur, if within one month the plaintiff institutes his action of a contentious suit; 4. If the person in whose favor the prescription runs expressly recognizes, by word or writing, or tacitly by indubitable acts, the right of the person against whom he prescribes.

Art. 1233. The causes which interrupt the prescription in respect to one of the debtors *in solidum* interrupts it in respect to the others.

Art. 1234. If the creditor who consents to the division of the debt in respect to one of the debtors *in solidum* shall only require of him the part which corresponds

to him, the prescription in respect to the others shall not be held as interrupted.

Art. 1235. The provisions in the two preceding articles are applicable to the heirs of the debtor whether or not he be debtor *in solidum*.

Art. 1236. The interruption of prescription against the principal debtor produces the same effects against his surety.

Art. 1237. In order that the prescription of an obligation shall be interrupted in respect to all the debtors not *in solidum*, the recognition or citation of all shall be required.

Art. 1238. The interruption of the prescription in favor of any of the creditors *in solidum* avails all.

Art. 1239. The effect of the interruption is to render useless for prescription all time which has run before it.

Art. 1240 The time for prescription is counted by years, and not from moment to moment, except in the case in which the law expressly determines it to be so.

Art. 1241. The months shall be regulated by the number of days which correspond to them.

Art. 1242. When the prescription is counted by days, there shall be understood as twenty-four natural hours, counted from twelve to twelve of the night.

Art. 1243. The day on which the prescription commences is counted entire, whether it be so or not; but that on which the prescription terminates must be complete.

Art. 1244. When the last day is a holiday, the prescription shall not be held as complete, but the next day, shall make it complete if it should be a working day.

Art. 1388. A contract is an agreement by which two or more persons transfer some right to each other, or contract some obligation.

Art. 1392. Contracts are perfected by the mere consent; and from then they obligate not only the fulfillment of what is expressly agreed, but also all the consequences which, according to its nature, are in conformity with good faith, with use and with the law.

Art. 1395. In order that a contract may be valid, it must have the following conditions: 1. Capacity of the contracting parties; 2. Mutual consent; 3. A lawful object. Art 1396. That which is not contrary to the law or good customs is lawful.

Art. 1398. All persons not excepted by the law are capable of contracting.

Art. 1399. He who is capable of contracting may do so by himself or by the means of another legally authorized.

Art. 1400. No one can contract in the name of another without being authorized by him or by the law.

Art. 1401. Contracts made in the name of another by him who is not his legitimate representative shall be null, unless the person in whose name they were made shall ratify them before they shall be retracted by the other.

Art. 1402. The consent of those who contract must be clearly shown.

Art. 1403. The manifestation of consent must be made by word, by writing, or by acts by which it is necessarily presumed.

Art. 1404. He only who shall have a physical impossi-

bility to speak or write can express his consent by other unquestionable signs.

Art. 1405. As soon as a proposition shall be accepted, the contract remains perfect, except in those cases in which the law requires some other formality.

Art. 1406. If the contracting parties should be present, the acceptation shall be made at the time of the proposition, save an express contract to the contrary.

Art. 1427. The contracting parties may place the clauses which they may think proper; but those which refer to the essential requisites of the contract, or shall be a consequence of their ordinary nature, shall be considered as placed although not expressed; unless the second shall be renounced in the cases and terms permitted by the law.

Art. 1439. The validity of contracts does not depend upon any external formality, unless in those cases in which the law expressly provides otherwise.

Art. 1535. Contracts legally made shall be punctually fulfilled, and they cannot be revoked or altered except by the mutual consent of the contracting parties, save the exceptions assigned in the law.

Art. 1536. The rights and obligations which result from contracts may be transmitted between the living, and by succession, if they are not purely personal by their nature, by the effect of the said contracts or by the provision of the law.

Art. 1546. From the time the contract is perfected by the consent of the parties, the risk of the thing is on account of the creditor, even when it has not been delivered.

Art. 1769. The extinction of obligations by limitation

is governed by the provisions of Chapter 5, Title 7, of Book 2.

Art. 1788. The action and the defense of nullity belong to the principal parties and to their sureties, excepting those cases in which the law expressly provides otherwise.

Art. 517. The right of action to declare an act void prescribes within the same terms which are prescribed for personal and real actions according to the nature of the account the nullity of which is concerned.

Art. 1200. Negative prescription runs with or without good faith by the mere lapse of twenty years from the date when the performance of the obligation could have been demanded according to the law.

Art. 1789. The nullity which arises from the incapacity of one of the contracting parties can not be alleged by the other, unless it is proved that at the time of the contract he was ignorant of the incapacity.

Art. 1790. Neither can the defense be alleged which arises from error or from intimidation, by him who has contributed to the one or the other.

Art. 1791. When the contract is null through incapacity, intimidation, or error, the vice or ground of nullity having ceased, and no other cause which invalidates a ratification occurring, the contract may be ratified.

Art. 1792. The voluntary fulfillment, by the means of payment, novation, or by any other manner, executed with same circumstances, shall be considered as ratified, and it can not be reclaimed.

Art. 1793. The ratification and the voluntary fulfillment of an obligation null for want of form or solemnity, which shall be made at any time, extinguishes the

action of nullity, excepting the cases in which the law expressly provides otherwise.

Art. 1794. The nullity of a contract being declared, each one of the contracting parties shall recover the thing which he shall have given, with its fruits or the value thereof, and that which it had when it was lost with the interest, if the restitution in kind should be impossible.

Art. 2939. A purchase and sale is a contract by which one of the contracting parties obligates himself to transfer a right or to deliver a thing and the other to pay a certain price and in money.

Art. 2946. The sale is perfect and obligatory for the parties by their sole agreement for the thing and for the price, although the first may not have been delivered nor the second satisfied.

Art. 2959. A sale of a thing belonging to another is null; and the vendor is responsible for the damages and losses if he shall proceed with fraud or bad faith.

Art. 2965. All persons can sell who are not legally prohibited from disposing of their property, either by reason of their condition, or on account of the nature of the thing itself.

Art. 2983. If the thing sold is real estate, it is said to be delivered as soon as the title (escritura publica), is executed, or if there is no writing, as soon as the titles to the estate are delivered.

Art. 2984. The provision in the preceding article shall be observed also for the transfer (translacion) of rights.

Art. 2985. In any case the delivery shall be considered made if the purchaser gives the thing as received.

Art 2996. If the sale of one or more immovable properties should be made for a fixed price, and without estimating specially their parts or measures, there shall be no ground for a recission, although in the delivery there should be a default or excess.

Art. 2997. If, in the sale of an immovable property, the lines have been designated, the vendor will be obilged to deliver all that is comprehended within them, although there may be an excess in the measure expressed in the contract.

Art. 3332. The acts and contracts, which in conformity with the law must be registered, will not produce any effect against a third party if they should not be inscribed in the respective office.

TRANSLATION OF PORTIONS OF THE CIVIL CODE OF CHIHUAHUA OF 1898, KNOWN AS THE NEW CODE.

ARTICLE 5. Acts performed contrary to prohibitory laws shall be null and void unless the same prohibitory law contains a provision to the contrary.

ARTICLE 10. Laws concerning the civil status and capacity of persons are binding upon citizens of this state, although they may reside in another state of the Republic or abroad, insofar as said acts are to bo performed or contracts to be executed in whole or in part within the limits of the State.

ARTICLE 11. Real estate situated in the State shall be governed by the laws of the same and also the Federal laws, without reference to the civil status of the owner.

ARTICLE 12. The form and external solemnities of contracts, wills and all public instruments shall be con-

trolled by the laws of the place in which they may be executed. However, residents of the State of Chihuahua, foreigners, or residents of other States residing outside of the State of Chihuahua, may contract subject to the forms and requirements prescribed by the laws of the same in *thos* cases where the performance is to be in the State of Chihuahua.

ARTICLE 15. If contracts and wills referred to in the preceding article should be executed by a foreigner, to be performed in the State, the obligor in the contract, or the testator in the will may elect the law to which the same shall be subject insofar as it refers to personal property. But with respect to real estate, the same shall be governed by Article 11.

ARTICLE 826. Possession is the holding of a thing or the enjoyment of a right by ourselves, or by another in our name.

ARTICLE 827. Possession as a means of purchase is either by good faith or bad faith.

ARTICLE 828. Those who are qualified to acquire are also qualified to hold. Incompetents according to law may hold through their legal representatives.

ARTICLE 832. For all legal purposes, possession creates the presumption of ownership in favor of the possessor.

ARTICLE 834. He who possesses or justly believes himself to be in possession by virtue of a title sufficient to authorize the transfer of ownership, is a possessor in good faith.

ARTICLE 835. He who is ignorant of the defects in his title is also a possessor in good faith. Ignorance is presumed in this case.

ARTICLE 836. One who is in possession knowing that he has no title or one who is in possession without just reason to believe that he has a title or one who is in possession and knows that his title is insufficient or defective is a possessor in bad faith.

ARTICLE 837. Possession is presumed to be in good faith subject to the provisions of Article 865.

ARTICLE 1065. Prescription (limitation) is a means of acquiring ownership of a thing or of getting rid of an encumbrance or discharging an obligation by the mere lapse of time and under the conditions prescribed by law.

ARTICLE 1066. The acquisition of things or rights by virtue of possession is called "positive prescription," the relief from obligation by reason of the failure to require their fulfillment is called "negative prescription."

ARTICLE 1067. Only those things, rights and obligations which are articles of commerce may be obtained by prescription with such exceptions as may be provided by law.

ARTICLE 1068. Those who are qualified to acquire ownership by any title whatsoever may also acquire the same by limitation. Minors and other incompetents may acquire by limitation through their legal representatives.

ARTICLE 1069. Negative limitation may be taken advantage of by everyone, even by those who cannot contract obligations.

ARTICLE 1070. The right to acquire ownership by positive limitation cannot be waived in advance.

ARTICLE 1071. Negative limitation may be waived, but the waiver shall have the only effect of doubling the period of limitation provided such extensions of time shall in no case exceed twenty years. The period of limitation

shall be counted from the day on which the waiver is made.

ARTICLE 1085. Possession, in order to ripen into title by limitation, must be: (1) founded on a just title; (2) in good faith; (3) peaceful; (4) continuous; (5) public.

ARTICLE 1086. A just title is one which but for some defect inherent therein would be sufficient to authorize a transfer of ownership.

ARTICLE 1087. He who alleges limitation must prove the existence of the title upon which he bases his right.

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ARTICLE 1089. Peaceful possession is that which has been acquired without violence. Only after violence has ceased may peaceful possession begin from a juridic standpoint.

ARTICLE 1088. Good faith is necessary only at the time of acquiring possession.

ARTICLE 1090. Continuous possession is that which has not been interrupted in any of the manners enumerated in Chapter 7 of this title.

ARTICLE 1091. Public possession is that which is enjoyed in such a manner that anyone who is interested in interfering with same may know thereof.

ARTICLE 1092. All real estate properties are subject to limitation in good faith, in ten years and in twenty years in bad faith, subject to the exceptions set forth in Article 1076.

ARTICLE 1093. In the same time and under the same conditions set forth in the preceding article, rights and

real actions, including voluntary easement, may be acquired by limitation.

ARTICLE 1097. Negative limitation runs with or without good faith, within twenty years counting from the time when the performance of the obligation could have been demanded.

ARTICLE 1131: Limitation is counted by years and not from moment to moment, except in cases when expressly so provided by law.

ARTICLE 1132. Months shall be counted according to the number of days which they have.

ARTICLE 1139. A contract is an agreement whereby two or more persons transfer some right or contract some obligation.

ARTICLE 1143. Contracts legally entered into not only obligate the parties to the specific fulfillment thereof, but also they assume the consequences thereof, which according to their nature are in accordance with good faith, custom, or law.

ARTICLE 1144. Contracts affect only the persons or parties thereto.

ARTICLE 1146. In order to be valid a contract must contain the following requisites: (1) the parties must be able to contract; (2) there must be mutual consent; (3) the object of the contract must be licit; and (4) it must be executed in accordance with the formalities required by law.

ARTICLE 1153. The consent of the contracting parties must clearly appear.

ARTICLE 1155. When a proposition is accepted, the contract is perfected, except in those cases where some other formality is required by law.

ARTICLE 1156. If the contracting parties be present, the acceptance of the contract shall be made to appear in the proportion itself, saving an express agreement to the contrary.

ARTICLE 1177. The contracting parties may insert such clauses therein as they deem convenient, but those which are indispensable to the contract itself, or a natural ordinary consequence thereof, shall be considered as having been incorporated therein, although not so expressed, unless these last be waived in such cases and under such conditions as permitted by law.

ARTICLE 1286. Contracts legally entered into shall be faithfully complied with and cannot be revoked nor altered except by the mutual consent of the contracting parties, saving such exceptions as may be prescribed by law.

ARTICLE 1287. Rights and obligations arising from contracts if not purely personal by nature or so declared to be by the contract or by some provision of law, may be transferred between persons in being, or by inheritance.

ARTICLE 1303. In the sale or transfer of things, certain and specific, the conveyance of the property shall be verified between the contracting parties by the mere effect of the contract itself without reference to tradition, whether natural or symbolical, excepting an agreement to the contrary.

ARTICLE 1543. The right to declare a contract void exists between the parties thereto and their bondsmen, excepting therefrom such cases as expressly made and provided by law.

ARTICLE 1546. When the contract is void by reason of

the incapacity of the parties, threats or mistake, it may be ratified, thereby curing the defect or reason for its nullity, provided no other cause impedes or prevents its ratification.

ARTICLE 1547. The voluntary compliance with a contract by means of payment, renewal or any other act performed under the same circumstances, shall be considered a ratification thereof and thereafter it cannot be attacked as being void.

ARTICLE 1548. The ratification and voluntary compliance with an obligation which is void by reason of lack of formality in whatever time the same may be made, extinguishes the right to have the same declared void, excepting therefrom such cases as are by law expressly provided.

ARTICLE 2676. The contract of purchase and sale is a contract by which the contracting parties obligate themselves, one to transfer a right or deliver a thing, and the other to pay a certain price in money.

ARTICLE 2683. The sale is perfected and becomes binding upon the parties by the mere agreement between them as to the thing and its price, although the first may not have been delivered nor the second satisfied, except in such cases where the law requires certain external formalities to make the contract valid.

ARTICLE 2687. From the moment in which the sale is perfected in accordance with Articles 1143 and 1303 and 2683, the thing belongs to the purchaser and the price to the seller, each one having the right to demand of the other a fulfillment of the contract.

ARTICLE 2717. If the thing sold is real estate, it is considered as having been delivered from the moment of

the execution of the deed of conveyance and if this should not be necessary, as soon as the respective private contract is excuted.

ARTICLE 2718. The provisions of the foregoing article shall be applicable also to the transfer of rights.

ARTICLE 2719. In any case, the delivery shall be considered as having been made after the purchaser acknowledges receipt thereof.

ARTICLE 2730. If the sale of one or more pieces of real estate be made for a fixed price, without fixing a special price for each one of thereof, nor setting forth the boundaries, the contract may not be rescinded although in the delivery thereof there may be a shortage or an excess.

ARTICLE 2731. If in the sale of real estate the metes and limits thereof shall be set forth, the seller shall be obligated to deliver all that is comprised within the description, although it may exceed that called for in the contract.

ARTICLE 2733. The rights arising from Articles 2728 and 2730 shall be barred by limitation within one year from the date of delivery.

ARTICLE 2—Transitory:—The periods of limitation which have been modified in this Code, which begin to run prior to January next, shall be calculated according to the Code which went into effect on March 1st, 1883; and those beginning to run thereafter shall be calculated in accordance with this Code.

Memo. Decision of the Court.

Filed July 5, 1935.

Plaintiffs bring suit herein in its nature a suit and action in Trespass to Try Title, under and in accordance with the Statutes of the State of Texas governing suits and actions in Trespass to Try Title relating to land. Jury waived by written stipulation filed.

It is an established, recognized, and conceded, principle and rule of law as relating to actions of trespass to try title brought under the Statutes and Laws of the State of Texas, such as Plaintiffs' suit herein, that plaintiff, in order to be entitled to any judment or recovery, must recover on strength of his own title, showing himself vested with superior title to the land in controversy.

As applied to the suit at bar it therefore follows that if the Agrarian Law of the State of Chihuahua, Mexico, of 1922, be held constitutional and valid under the laws of Mexico, and the proceedings of expropriation proclamation and acts of the Governor of the State of Chihuahua, Mexico, of date March 5, 1925, regular and valid under the laws of Mexico, where the land in question was then located, and the State of Chihuahua vested with jurisdiction and sovereignty over same, plaintiffs thereby became divested of any and all title they may have had in and to said land, and the title to same became vested in the State of Chihuhua, subject to sale in manner prescribed by the then laws of the State of Chihuahua, plaintiffs are not entitled to any judgment or recovery herein.

It is held by the Court in the case at bar that the Agrarian Law of the State of Chihuahua, Mexico, of date May 25, 1922, is constitutional, legal and valid, authorized by Federal Constitution of Mexico of 1917, proclaimed May 1, 1917, so held and construed by the Courts of

last resort of the United States of Mexico, superior Courts of Mexico. And it is held that the Proclamation and other proceedings of the Governor of the State of Chihuahua, Mexico, relating to expropriation by the State of Chihuahua embracing the land in controversy, were regular and legal under the then existing laws of the State of Chihuahua; and thereby plaintiffs lost and became divested of all title, if any, then vested in them to the land here in controversy, and the title to same then became vested in the State of Chihuahua, subject to sale and disposition in manner as prescribed by the laws of the State of Chihuahua.

Under the Agrarian Law of the State of Chihuahua, and laws of Mexico, it is not made a condition precedent to expropriation of land by the State of Chihuahua, as in case at bar, that compensation be paid prior to or at time of expropriation and taking of land by the State, or payment of same then provided for. At most the right to payment of compensation for the taking of land, expropriation thereof by the State of Chihuahua, is merely a claim to be urged and collected through the Courts of Mexico, by any party entitled to same, or through the political department or departments.

In view of the foregoing holding by the Court it probably becomes unnecessary for the Court to rule o nthe many questions and issues raised and urged on trial of this case relating to contention of plaintiffs, that plaintiffs are shown to have acquired and become vested with legal title by regular chain of conveyances to the land here in controversy, and also by limitation or prescription, and objections urged to documents offered in evidence tending to show defendant to have acquired a right or title in or to the land in controversy.

If necessary to pass and rule on same the Court holds that under the evidence and record, offered on the trial

of the cause, plaintiffs are shown to have record title to such land, under the laws of Mexico, at time of enactment of the Federal Constitution of Mexico of 1917, proclaimed May 1, 1917, authorizing and directing passage of Agrarian Laws by the respective States of Mexico, including the State of Chihuahua, vested with title to said land. But plaintiffs are held to have lost title to said land by virtue of the Agrarian Law of the State of Chihuahua of 1922, the proclamation and expropriation proceedings by the Governor of the State of Chihuahua, of date March 5, 1925, and the title to such land thereby became vested in the State of Chihuahua, subject to sale and disposition in accordance with the laws of said State, as in this decision hereinbefore announced.

That in accordance with the terms and provisions of such laws of the State of Chihuahua and of Mexico, relating to such subject, the defendant Pascual Mier on March 14, 1925, filed application to purchase said land of the State of Chihuahua, and thereby acquired a right and interest in same. Said land at such time being located in the State of Chihuahua, and under the sovereignty and jurisdiction of the State of Chihuahua. Said land here in controversy, designated as El Guayuco Banco, having been cut off from Mexico and changed to the United States of America by sudden avulsive change in course of the Rio Grande River, in the year 1926, and by terms of treaties between the United States of America and the United States of Mexico relating to bancos, and action of the International Boundary Commission promulgated March 3, 1930, sovereignty, dominion and jurisdiction over same passed to the United States of America, giving this Court jurisdiction over this controversy involving title to the land here in question. Notwithstanding plaintiffs and defendant, respectively, assert title

thereto derived under the laws of Mexico and the State of Chihuahua, Mexico.

The Court further holds that by virtue of the provisions and terms of the Constitution of Mexico of 1917, Art. 27 thereof, proclaimed May 1, 1917, relating to Agrarian Laws, and directing enactment of such by the various States of Mexico; even if it could be held plaintiffs were in possession, had been in possession of said land, which the Court does not hold, same would have failed to ripen into title by limitation, under the statutes and laws of Mexico relating to title by limitation, prior to enactment and going into effect of such Constitution of Mexico by proclamation of May 1, 1917.

In the event it be disclosed by the record taken on trial of this cause that the Court reserved ruling upon objections urged by respective parties to admission of certain testimony offered on trial by either plaintiffs or defendant, the Court directs entry of an order, and that it be so shown by the record, that the Court overrules all objections so urged as to admissibility of testimony, on which the Court may have reserved ruling, and such evidence is admitted as part of the record, to which ruling it may be noted respective parties duly excepted; and all rulings made by the Court on trial of this cause, as noted and disclosed by the record, as to admissibility or rejection of testimony to stand as made as noted in record of the court reporter taking the testimony and record on trial of this case.

Accordingly, judgment will be entered herein that plaintiffs have and recover nothing by reason of their suit herein, and that defendant Pascual Mier go hence without day and recover costs as against plaintiffs; and that defendant Dave Gill have judgment on his disclaimer filed herein and recover costs against plaintiffs. Attorneys for defendant Pascual Mier may prepare draft

of judgment for entry herein in accordance with the Court's ruling and decision herein announced.

In event interested parties request specific Findings of Fact and Conclusions of Law be prepared and filed by the Court herein, attorneys for defendant are requested to prepare draft of suggested Findings of Fact and Conclusions of Law in conformity with the Court's decision herein announced, and submit same to the Court, furnishing attorneys for plaintiffs a copy thereof, and attorneys for plaintiffs may submit additional suggested Findings of Fact and Conclusions of Law for consideration by the Court in drafting Findings of Fact and Conclusions of Law to be filed herein.

CHARLES A. BOYNTON,
United States District Judge.

July 5, 1935.

Judgment.

Filed July 5, 1935.

BE IT REMEMBERED: That at a previous term of this court came on to be heard and considered the above entitled and numbered cause, and plaintiffs appearing by counsel and defendant Pascual C. Mier appearing in person and by counsel, and defendant Dave Gill having heretofore filed a disclaimer in said cause, and a jury having been waived, the issues of fact as well as of law were submitted to the Court, and the Court having heard and considered the evidence and the argument of counsel thereon, took the same under advisement, and now on this 5th day of July, A. D. 1935, renders its judgment and does find and decree as follows:

1. It is the order, judgment and decree of the Court that plaintiffs take nothing by their suit, and that defend-

ant Pascual C. Mier go hence without day and have and recover of plaintiffs his costs in this behalf incurred.

2. It is the further order, judgment and decree of the Court that defendant Dave Gill have judgment on his disclaimer, filed herein and that he have and recover his costs, as against plaintiffs, in this behalf incurred.

3. It is the order, judgment and decree of the Court that the officers of the court have and recover of the respective parties the costs by them respectively incurred, for all of which let execution issue.

4. It is the further order, judgment and decree of the Court that wherever it is disclosed by the record taken on the trial of this cause by the official court stenographer that ruling was reserved upon objections urged by the respective parties to the admission of testimony, all such objections as to the admissibility of testimony on which the Court reserved ruling, are overruled and said testimony is admitted as a part of the record, and to the overruling of such objections each of the parties to the suit respectively except to the action of the Court taken thereon.

To all of which plaintiffs in open court excepted and gave notice of appeal to the United States Circuit Court of Appeals for the Fifth Circuit.

CHARLES A. BOYNTON,
Judge.

O. K. as to form
H. R. GAMBLE
WALTER S. HOWE

Findings of Fact and Conclusions of Law.

Filed October 4, 1935.

In accordance with the request of the parties hereto, the Court makes the following Findings of Fact and Conclusions of Law in the above entitled and numbered cause:

FINDINGS OF FACT

1. This is a suit in trespass to try title, involving the lands known as the Guayuco Banco, which the evidence in the case discloses was cut from Mexico to the United States during the year 1926, and eliminated in accordance with the treaty between the United States and Mexico, signed at Washington March 20, 1905, and proclaimed June 5, 1907, plaintiffs claiming title by virtue of a chain of conveyances from the sovereignty of the soil, to-wit, the Republic of Mexico, as well as by limitation, under the Mexican Statutes applicable thereto.

2. Under the holding of the Court as to the law in this case, it is probably unnecessary for the Court to rule upon the validity of plaintiffs' title prior to the expropriation thereof under the Constitution of 1917, but if necessary to pass and rule on same, the Court finds that the plaintiffs are shown to have record title to the land in dispute, under the laws of Mexico, at the time of the adoption of the Federal Constitution of 1917.

3. Neither the plaintiffs, nor their agents or employees ever had pacific, continuous, physical, public possession of the premises required by the laws of Mexico, for the period of time required by the laws of Mexico to vest title by prescription.

4. There was no evidence of pacific, continuous, pub-

lic actual possession of the land by the plaintiffs or anyone through whom they deraigned title, for any period of time.

5. Neither the plaintiffs nor anyone through whom they deraigned title had permission to acquire or hold title within the zone in which the premises are situated on February 13, 1897, at the date of the deed from Bennett H. Davis to Shapleigh, Peck and Ranken.

6. The permit of A. L. Shapleigh, Charles H. Peck and Thomas H. Renken to acquire and hold title to land within the prohibited zone, in which this land is situated, was issued and dated August 25, 1897.

7. None of the plaintiffs in the case at bar ever received or acquired the right to acquire or hold title within the prohibited zone, with the exception of A. L. Shapleigh.

8. The Federal Constitution of Mexico of 1917, proclaimed May 1, 1917, authorized and directed the States of the Mexican Republic, including the State of Chihuahua, to pass agrarian laws to compel the division of la ge landed estates. (Latifundia).

9. In accordance with such mandate of the Federal Constitution of Mexico, the State of Chihuahua enacted such an Agrarian Law on May 25, 1922.

10. The proclamation and other legal proceedings by which the Governor of the State of Chihuahua undertook to expropriate the latifundium comprising "La Santisima", "San Antonio", "El Comedor" and "Vado de Piedra", were regular and in accordance with the then existing laws of the State of Chihuahua, and in all respects conformed to the requirements of the Constitution of 1917, and of the Agrarian Law of the State of Chihuahua.

11. That the tracts of land referred to in the above Finding 10 comprised approximately ..... hectares, (..... acres), and constituted a latifundium, within the definition of the Agrarian Law of the State of Chihuahua.

12. That prior to the passage of the Agrarian Law of the State of Chihuahua, no portion of the land comprising the latifundium is shown to have been cultivated, occupied or inhabited.

13. That subsequent to the passage of the Agrarian Law and the expropriation of the latifundia, approximately 4,000 people have settled thereon.

14. The plaintiffs and those through whom they deraigned title were notified of the expropriation proceedings, and given the opportunity to comply with the Agrarian Law of the State of Chihuahua, and failed to do so.

15. In the course of the expropriation proceedings, the Governor of the State of Chihuahua officially determined that none of the plaintiffs were entitled to acquire or hold real estate within the prohibited zone, the prohibited zone being a strip of land twenty (20) leagues in width along the national boundary line.

16. The Constitution of 1917 and the Agrarian Law of the State of Chihuahua do not require that compensation be paid prior to or at the time of expropriation and taking of land by the State, or that payment for same be then provided for.

17. Claim for compensation for land expropriated under the Constitution of Mexico and the Agrarian Law must be urged and collected through the courts of Mexico, having jurisdiction to determine the amount thereof and who is entitled thereto.

18. Plaintiffs lost all title which they had to the lands

in question, by virtue of the Constitution of 1917, of the Agrarian Law of the State of Chihuahua of 1922, passed in obedience thereto, by the proclamation and expropriation proceedings by the Governor of the State of Chihuahua, of date March 5, 1925, and the title to such land thereby became vested in the State of Chihuahua and subject to sale and disposition in accordance with the laws of said State.

19. In accordance with the terms and provisions of the laws of the State of Chihuahua and of the Republic of Mexico, relating thereto, the defendant, Pascual C. Mier, on March 14, 1925, filed with the proper authorities his application to purchase from the State of Chihuahua certain lands, embracing the lands in controversy, and thereby acquired a right and interest in the same.

20. Said land, at the time of its expropriation, and at the time defendant Pascual C. Mier filed application to purchase the same, was located in the State of Chihuahua and under the sovereignty and jurisdiction of that State and of the Republic of Mexico.

21. The land in controversy, designated as El Guayuco Banco, was cut from the South or right bank of the Rio Grande to the North or left bank of the Rio Grande by an avulsive change in the course of the Rio Grande in the year 1926, and constitutes a true banco, within the meaning of the banco elimination treaty proclaimed June 5, 1907.

22. That by the treaties applicable and the decision of the International Boundary Commission, promulgated March 3, 1930, dominion and jurisdiction over the Guayuco Banco passed to the United States of America, giving this Court jurisdiction over the controversy involving the title to the land here in question.

23. The Constitution of Mexico of 1917, Article 37, proclaimed May 1, 1917, relating to the Agrarian Laws and directing the enactment of such by the various Mexican States, precluded plaintiffs' claim to the land in controversy from ripening into title by possession, even if it could be held that the plaintiffs had been in possession of said land, which the Court does not hold.

24. The Agrarian Law of the State of Chihuahua, enacted May 25, 1922, is constitutional and valid under the Constitution and laws of Mexico.

25. The expropriation proceedings and the proclamation and acts of the Governor of the State of Chihuahua, of date March 5, 1925, are regular and valid under the laws of Mexico, where the land in controversy was located at the time such action was taken.

26. The State of Chihuahua, Republic of Mexico, was vested with jurisdiction and sovereignty over the land in controversy at the time of the proclamation of the Constitution of 1917, and at the time of the expropriation proceedings by the State of Chihuahua.

27. By virtue of the expropriation proceedings, the plaintiffs became divested of any and all title they may have had in and to the lands in controversy.

28. The Agrarian Law of the State of Chihuahua has been held and construed to be valid and constitutional by the courts of last resort of the United States of Mexico, and by the superior courts of the State of Chihuahua.

29. None of the plaintiffs are shown to be citizens of the Republic of Mexico, but are foreigners thereto.

30. The plaintiffs were represented by counsel in the expropriation proceedings, but failed to comply with the orders of the Governor to present proof of title and of

the right to hold title within the prohibited zone, and they thereafter presented to the International Claims Commission, United States and Mexico, a claim for restitution of the lands and for damages.

CONCLUSIONS OF LAW

1. Plaintiffs have not shown title in themselves to the lands in controversy.

2. The Agrarian Law of the State of Chihuahua of May 25, 1922, is a valid and constitutional act authorized by the Federal Constitution of Mexico of 1917, proclaimed May 1, 1917.

3. The proclamation and other legal proceedings of the State of Chihuahua and the Governor thereof, relating to the expropriation of the land in controversy, were regular and legal under the then existing laws of the State of Chihuahua, and divest plaintiffs of any and all title, if any they had, to the premises in controversy.

4. By virtue of the expropriation proceedings of the State of Chihuahua and the Governor thereof, acting under the laws of said State, the title to the land in controversy became vested in the State of Chihuahua, and subject to sale in the manner prescribed by the then existing laws of the State of Chihuahua.

5. Under the Constitution of Mexico of 1917, foreigners had no right to acquire title to real property in the prohibited zone.

6. Under the Constitution of Mexico of 1917, payment for land expropriated for public use is not required to be made in advance, or at the time of such expropriation, but payment therefor may be made subsequent to the taking.

7. Claim for compensation for land expropriated under the laws of Mexico must be sought through the courts of Mexico, or, if sought by foreigners, may be sought through the political department of their Government.

8. Plaintiffs never acquired title to the land in controversy by limitation or prescription, under the laws of Mexico.

9. The land in controversy being shown to have been within the State of Chihuahua, Republic of Mexico, at the time of the expropriation proceedings, was subject to the sovereignty and jurisdiction thereof, and the validity of such proceedings must be determined by the laws of Mexico and by the courts thereof.

10. Title to the land in controversy having been vested into the State of Chihuahua by the expropriation proceedings, was subject to purchase under the terms of the expropriation law, and the defendant Pascual C. Mier having filed application to purchase the same on March 14, 1925, he thereby acquired a legal right to and interest therein.

11. By virtue of the treaties applicable and the action of the International Boundary Commission, promulgated March 3, 1930, defining and declaring the Guayuco Banco, the dominion and jurisdiction over same passed to the United States of America, giving this Court jurisdiction over this controversy, involving the title to the lands in question.

CHARLES A. BOYNTON,
United States District Judge.

Petition for Appeal.

Filed October 4, 1935.

To the Honorable Charles A. Boynton, District Judge:

The above named plaintiffs, feeling aggrived by the judgment rendered and entered in the above entitled cause on the 5th day of July, A. D. 1935, do hereby appeal from said judgment to the United States Circuit Court of Appeals for the Fifth Circuit, for the reasons set forth in the Assignment of Errors filed herein, and they pray that their appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said judgment is based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Fifth Circuit, under the rules in such cases made and provided, and that the appeal is taken from all of said judgment, and they further pray that the proper order relating to the required security to be required of them be made.

McKENZIE & GAMBLE
By: H. R. GAMBLE
H. R. Gamble
Attorneys for Plaintiffs.

Assignment of Errors.

Filed October 4, 1935.

NOW COME the plaintiffs in the above entitled and numbered cause, and assign the following errors committed by the trial Court in the trial of the above case:

1. The Court erred in failing to award judgment in favor of the plaintiffs.

2. The Court erred in awarding judgment in favor of the defendant.

3. The Court erred in holding that the plaintiffs were not entitled to recover the land in controversy.

4. The Court erred in holding that the defendant was entitled to recover the land in controversy.

5. The Court erred in failing to hold that at all times material to this controversy, valid record title to the land in dispute was vested in the plaintiffs.

6. The Court erred in failing to hold that at all times material to this controversy, valid title by prescription, to the land in dispute was vested in the plaintiffs.

7. The Court erred in holding that valid title to the land in controversy was ever vested in the defendant.

8. The Court erred in failing to hold that each and every one of the alleged muniments of title relied upon by the defendant was null and void and of no force or effect.

9. The Court erred in holding that the plaintiffs did not have permisison to acquire or hold title to the land in controversy.

10. The Court erred in holding that the attempted expropriation of the land in controversy by the Governor of the State of Chihuahua, Mexico, was constitutional and valid and in all respects regular.

11. The Court erred in holding that prior to the passage of the Agrarian Law of the State of Chihuahua, no portion of the land comprising the latifundium of which the land here in controversy was a part, is shown to have been cultivated, occupied or inhabited.

12. The Court erred in holding that the plaintiffs and those through whom they deraigned title were notified of the expropriation proceedings and given the opportu-

nity to comply with the Agrarian Law of the State of Chihuahua and failed to do so.

13. The Court erred in holding that in the course of the expropriation proceedings the Governor of the State of Chihuahua officially determined that none of the plaintiffs were entitled to acquire or hold real estate within the prohibited zone.

14. The Court erred in holding that the Constitution of 1917 and the Agrarian Law of the State of Chihuahua do not require that compensation be paid prior to or at the time of expropriation and taking of land by the State or that payment for same be then provided.

15. The Court erred in holding that claim for compensation for land expropriated under the Constitution of Mexico and the Agrarian Law, must be urged and collected through the Courts of Mexico.

16. The Court erred in holding that plaintiffs lost all title which they had to the lands in question by virtue of the Constitution of 1917, the Agrarian Law of the State of Chihuahua of 1922, by the proclamation and expropriation proceedings by the Governor of the State of Chihuahua of date March 5, 1925, and the title to such land thereby became vested in the State of Chihuahua and subject to sale and disposition in accordance with the laws of said state.

17. The Court erred in holding that the land in controversy at the time the defendant filed application to purchase the same, was located in the State of Chihuahua and under the sovereignty and jurisdiction of that state and of the Republic of Mexico.

18. The Court erred in holding that the Constitution of Mexico of 1917, Article 37 proclaimed May 1, 1917,

relating to the agrarian laws and directing enactment of such by the various Mexican states, precluded plaintiffs' claim to the land in controversy from ripening into title by possession.

19. The Court erred in holding that the Agrarian Law of the State of Chihuahua enacted May 25, 1922 is constitutional and valid under the constitution and laws of Mexico.

20. The Court erred in holding that the expropriation proceedings and the proclamation and acts of the Governor of the State of Chihuahua of date March 5, 1925 are regular and valid under the laws of Mexico.

21. The Court erred in holding that the State of Chihuahua, Republic of Mexico, was vested with jurisdiction and sovereignty over the land in controversy at the time of the proclamation of the Constitution of 1917 and at the time of the expropriation proceedings by the State of Chihuahua.

22. The Court erred in holding that by virtue of the expropriation proceedings the plaintiffs became divested of any and all title they may have had in and to the lands in controversy.

23. The Court erred in failing to hold invalid and null and void and of no force or effect, the Agrarian Law of the State of Chihuahua, Mexico, and the attempted expropriation by the Governor of the State of Chihuahua of the land here in controversy, because contrary to the principles of international law, contrary to the provisions of the Mexican Constitution of 1917 and contrary to the provisions of the Statutes of the State of Chihuahua, Mexico.

24. The Court erred in failing to hold that the land

here in controversy was in the United States and outside of Mexico at the time of the attempted transfer by the Governor of the State of Chihuahua to defendant Pascual C. Mier, and that at that time neither Mexico nor any Mexican official had any right to meddle with the land or the title thereto.

25. The Court erred in failing to hold that there was never any payment or tender of payment for the land in controversy under the attempted expropriation proceeding.

26. The Court erred in failing to hold that the attempted expropriation of the land in controversy was null and void and of no force or effect because there was never any payment or tender of payment for such land.

27. The Court erred in holding that the land in controversy was ever at any time any part of a latifundium within the definition of the Agrarian Law of the State of Chihuahua, Mexico.

28. The Court erred in holding that defendant Pascual Carlos Mier acquired any character of right or interest in the land in controversy by filing on March 14, 1925 with the authorities of the State of Chihuahua, Mexico, his application to purchase certain lands embracing the land in controversy.

29. The Court erred in holding that by the decision of the International Boundary Commission promulgated March 3, 1930, dominion and jurisdiction over the El Guayuco Banco passed to the United States of America.

30. The Court erred in failing to hold that dominion and jurisdiction over El Guayuco Banco passed to the United States of America at the time of its creation, in the year 1926.

WHEREFORE, plaintiffs pray that said errors be corrected and that judgment be entered in favor of the plaintiffs and against the defendant.

McKENZIE & GAMBLE,
By: H. R. GAMBLE
H. R. Gamble
Attorneys for Plaintiffs.

Order Allowing Appeal and Fixing Bond.

Filed October 4, 1935.

On this 4th day of October, A. D. 1935, upon a consideration of the application of the plaintiffs herein for appeal,

IT IS HEREBY ORDERED that the appeal as prayed for be, and the same is hereby allowed, and that a certified transcript of the record and all proceedings in said cause be forthwith transmitted to the United States Circuit Court of Appeals for the Fifth Circuit.

IT IS ORDERED that the appeal bond be fixed at the sum of $750.00.

CHARLES A. BOYNTON,
United States District Judge.

Appeal Bond.

Filed October 4, 1935.

KNOW ALL MEN BY THESE PRESENTS:

That we, A. L. SHAPLEIGH, THOMAS R. LYLE, ROBERT P. R. LYLE, DAVID R. LYLE, MARGARET C. LYTLE, JANE P. HANNA, MISSISSIPPI VALLEY TRUST COMPANY, Trustee under the Will of Hugh R. Lyle, Deceased, and REBECCA P. DUSENBERRY, BELLE P. BRYANT, MAX M. BRYANT,

and ELIZABETH P. PECK, Trustees under the Will of Charles H. Peck, Deceased, as Principals, and UNITED STATES FIDELITY AND GUARANTY COMPANY, as Surety, are held and firmly bound unto PASCUAL MIER, in the sum of $750.00, lawful money of the United States to be paid to him and his heirs and assigns, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and each of our heirs, executors and administrators by these presents.

SEALED with our seals and dated this 4th day of October, A. D., 1935.

WHEREAS, the above named, A. L. Shapleigh, Thomas R. Lyle, Robert P. R. Lyle, David R. Lyle, Margaret C Lytle, Jane P. Hanna, Mississippi Valley Trust Company, Trustee under the Will of Hugh R. Lyle, Deceased, and Rebecca P. Dusenberry, Belle P. Bryant, Max M. Bryant, and Elizabeth P. Peck, Trustees under the Will of Charles H. Peck, Deceased, have sued out an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, to reverse the judgment of the District Court of the United States for the Western District of Texas, in the above entitled cause,

NOW THEREFORE, the condition of this oblgation is such, that if the above named A. L. Shapleigh, Thomas R. Lyle, Robert P. R. Lyle, David R. Lyle, Margaret C. Lytle, Jane P. Hanna, Mississippi Valley Trust Company, Trustee under the Will of Hugh R. Lyle, Deceased, and Rebecca P. Dusenberry, Belle P. Bryant, Max M. Bryant, and Elizabeth P. Peck, Trustees under the Will of Charles H. Peck, Deceased, shall prosecute their said appeal to effect, and answer all costs if they fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

A. L. SHAPLEIGH,

THOMAS R. LYLE,
ROBERT P. R. LYLE,
DAVID R. LYLE,
MARGARET C. LYTLE,
JANE P. HANNA,
MISSISSIPPI VALLEY TRUST COMPANY, Trustee under the Will of Hugh R. Lyle, Deceased,
REBECCA P. DUSENBERRY,
BELLE P. BRYANT,
MAX M. BRYANT,
ELIZABETH P. PECK,
Trustees under the Will of Charles H. Peck, Deceased,

By: H. R. GAMBLE
H. R. GAMBLE, *Attorney.*

UNITED STATES FIDELITY AND GUARANTY COMPANY

By: O. C. COLES,
Atty-in-Fact.

(Seal)

October 4, 1935.

I consider the surety on the foregoing bond sufficient to its undertaking therein. Treasury Dept. Circular of April 15, 1935.

J. N. PHILLIPS, *Deputy Clerk.*

The within bond is approved, both as to sufficiency and form, this 4th day of October, A. D. 1935.

CHARLES A. BOYNTON,
United States District Judge.

Notice of Appeal.

Filed October 4, 1935.

You are hereby notified that the above named plaintiffs, feeling aggrieved by the judgment rendered in the above styled and numbered cause by the District Court of the United States in and for the Western District of Texas on the 5th day of July, A. D., 1935, do hereby appeal from said judgment and all of said judgment, and this notice is hereby given you under and by virtue of the Act of Congress providing for appeals in such cases.

McKENZIE & GAMBLE
By: H. R. GAMBLE
H. R. Gamble
Attorneys for Plaintiffs.

Received copy of the above notice this 4th day of October, A. D., 1935. Service of the same is hereby accepted, and further notice and issuance and service of citation are hereby waived.

RICHARD F. BURGES
Attorneys for Defendant.

Order to Forward Original Exhibits to C. C. of A.

Filed October 14, 1935.

NOW, this 14th day of October, A. D., 1935, upon consideration of the motion of the attorneys for the respective parties in the above entitled and numbered case, the same is hereby granted, and IT IS ORDERED That the original exhibits hereinafter described be forwarded with the record on appeal to the United States Circuit Court of Appeals for the Fifth Circuit for the inspection and consideration of that Court on the appeal.

Plaintiffs' Exhibit 3 being International Boundary Commission Map of El Guayuco Banco, No. 319.

Plaintiffs' Exhibit 28 being map of Rio Grande made by M. L. Cardona, showing La Santissima tract of land and El Guayuco Banco.

Defendant's Exhibit 1 being blueprint made by M. L. Cardona, showing topography of La Santissima tract of land.

CHARLES A. BOYNTON,
United States District Judge.

Order Extending Time for Filing Transcript of Record.

Filed October 31, 1935.

Now this, the 31st day of October A. D. 1935, the time for filing the record of appeal in the above entitled and numbered case not yet having expired and it being made to appear to the Court that on account of the size of the record, it will be impossible to prepare and print the record and file same in the office of the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, within the time allowed by rule of Court.

Therefore, an extension of sixty days is hereby allowed so that the time for filing such record will expire on the 2nd day of January, A. D. 1936.

(Sig.) CHARLES A. BOYNTON,
United States District Judge.

Praecipe.

Filed October 23, 1935.

To D. H. Hart, Clerk of said Court:

Please take notice that the Plaintiffs-Appellants designate the following as portions of the record in this case, which they hereby require be incorporated in the transcript on this appeal.

1. Plaintiffs' Second Amended Original Petition.
2. Plaintiffs' Original Answer.
3. Plaintiffs' First Amended Original Abstract of Title (see page 9) (omitting everything but index, because incorporated in Bill of Exceptions).
4. Defendant's Abstract of Title (see page 253) (omitting everything but the index, because incorporated in Bill of Exceptions).
5. Stipulation as to Evidence.
6. Bill of Exceptions.
7. Translation of Mexican laws (omitting Agrarian Law beginning on page 19, because in Bill of Exceptions).
8. Memorandum Opinion of the Trial Court.
9. Judgment.
10. Findings of Fact and Conclusions of Law.
11. Petition for Appeal.
12. Assignment of Errors.
13. Order Granting Appeal and Fixing Bond.
14. Appeal Bond and Order Approving same.
15. Notice of Appeal, with Appellee's Waiver of Service and Waiver of Issuance of Citation.
16. Order Directing Clerk to send certain Original Exhibits to Circuit Court of Appeals.
17. This praecipe.

Yours Respectfully,

McKENZIE & GAMBLE,
McKenzie & Gamble
Attorneys for Plaintiffs-Appellants.

O. K.
WALTER S. HOWE

Clerk's Certificate.

United States of America
Western District of Texas.

I, D. H. Hart, Clerk of the United States District Court in and for the Western District of Texas, do hereby certify that the foregoing on 451 pages is a true and correct transcript of the proceedings had and the orders entered in Cause No. 1650-Law, styled A. L. Shapleigh, et al., vs. Pascual Mier, as the same appear on file and of record in this office.

And I do further certify that the foregoing record embraces only such instruments and orders as are specified in the praecipe filed by the appellants and agreed to by the appellee.

Witness my official signature and the seal of said Court hereto affixed at office, in the City of El Paso, Texas, this 9th day of December, A. D. 1935.

D. H. HART, *Clerk*

By..... *Deputy Clerk.*
J. N. PHILLIPS.

(Seal)

[fol. 453] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of April 8th, 1936

No. 7989

A. L. SHAPLEIGH et al.

versus

PASCUAL MIER

On this day this cause was called, and, after argument by H. R. Gamble, Esq., for appellants, and Richard F. Burges, Esq., for appellee, was submitted to the Court.

[fol. 454] CERTIFIED COPY OF ORDER OF LOWER COURT EXTENDING TIME TO FILE BILL OF EXCEPTIONS UP TO OCTOBER 13, 1935—Filed April 16, 1936

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF TEXAS, EL PASO DIVISION

No. 1650. Law

A. L. SHAPLEIGH et al.

vs.

PASCUAL C. MIER

Friday, September 20, 1935.

Order Extending Time to File Bill of Exceptions

Now, this 20th day of September, A. D. 1935, on motion of H. R. Gamble, Esquire, of counsel for plaintiffs, It is ordered, adjudged and decreed that an additional twenty (20) days be and the same are hereby granted for the filing by the plaintiffs of their bills of exception, that is to say,

the plaintiffs shall have the time up to and including October 13, 1935, in which to file their bills of exception.

(Signed) Charles A. Boynton, United States District Judge.

UNITED STATES OF AMERICA,
Western District of Texas, ss:

I, D. H. Hart, Clerk of the District Court of the United [fol. 455] States of America for the Western District of Texas, do hereby certify that the foregoing is a true and correct — of the order extending time to file Bill of Exceptions in cause No. 1650 Law, Styled: A. L. Shapleigh, et al., vs. Pascual C. Mier, as the same appears of record at page 562, Book 32, Minutes of the Court at El Paso, Texas.

Witness my official signature and the seal of said Court hereto affixed, at office in the City of El Paso, Texas, this 14th day of April, A. D. 1936.

D. H. Hart, Clerk, by (Signed) J. N. Phillips, Deputy. (Seal.)

[fol. 456] OPINION OF THE COURT—Filed April 30th, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7989

A. L. SHAPLEIGH et al., Appellants,

versus

PASCUAL MIER, Appellee

Appeal from the District Court of the United States for the Western District of Texas

(April 30, 1936)

Before Sibley, Hutcheson and Holmes, Circuit Judges

SIBLEY, Circuit Judge:

The appellants, as citizens of the State of Missouri, sued the appellee as a citizen of Mexico, at law in an action of

trespass to try title to 337 acres of land in Hudspeth County, Texas, known as Guayuco Banco No. 319, alleging that their rights grew directly out of the treaty of 1905 between the United States and Mexico. A plea of not guilty was entered. Jury was waived, and issues of fact as well as of law were submitted to the court. On July 5, 1935, a general judgment for the defendant was rendered with a [fol. 457] memorandum offering to make specific findings of fact and conclusions of law. On Oct. 4th, during the same term, such were filed. No party contending otherwise, we consider that the waiver of jury was under 28 U. S. C. A., § 773, and that the findings of fact are to have the effect of a special verdict as provided thereby. Since there are no rulings on demurrers, according to 28 U. S. C. A., § 875 review upon appeal is confined to rulings of the court in the progress of the trial if excepted to at the time and duly presented by a bill of exceptions, and to the question whether the facts specially found support the judgment. The power of the appellate court is restricted within these limits. Lewellyn vs. Electric Reduction Co., 275 U. S. 243; Fleischmann Co. vs. United States, 270 U. S. 349; Harvey Co. vs. Malley, 288 U. S. 416; Eastman Kodak Co. vs. Gray, 292 U. S. 332. The bill of exceptions shows numerous objections to evidence which were overruled in the final judgment and exception allowed, but none of these are assigned as error. There was no motion by appellant for a judgment on the facts generally or for the finding of any special facts, but only a general exception taken to the judgment rendered. This last, if necessary, suffices to raise the question whether the facts as found support the judgment, and assignments of error properly follow it up. Other assignments that the court erred in finding numerous special facts we cannot consider because of the prohibition of Sect. 875. We are bound to accept the facts as found.

Those material to be discussed are in brief as follows: Guayuco Banco was cut from Mexico into the United States during the year 1926 by a change in the course of the boundary river, Rio Grande, under provisions of the treaty signed March 20, 1905, and proclaimed June 5, 1907, between Mexico and the United States, 35 Stats. 1863. The plaintiffs had a record title to a very large tract of land in [fol. 458] Mexico which included the Banco prior to and at

the time of the adoption of the Mexican Constitution of 1917, but had no actual possession and no prescriptive title; and only one of them had a permit as a foreigner to own land in the border zone in which this land lay. The Constitution of 1917 required the States of the Mexican Republic, including the State of Chihuahua where this land lay, to pass agrarian laws to compel the division of large landed estates, and on May 25, 1922, the State of Chihuahua enacted such a law. Under it the Governor of Chihuahua undertook to expropriate the plaintiffs' lands along with ohers by proceedings which were in all respects regular and in accordance with the law and the Constitution of 1917. The plaintiffs and their predecessors in title were notified of the expropriation proceedings and given opportunity to comply with the agrarian law and failed to do so. They were represented by counsel in the proceedings but failed to comply with the orders of the Governor to present proof of their title and their right to own land within the prohibited zone. The expropriation was proclaimed by the Governor March 5, 1925. By virtue of these proceedings plaintiffs became divested of any and all title they may have had to the lands in controversy. The agrarian law of Chihuahua has been held valid and constitutional by the courts of last resort of the United States of Mexico, and the superior courts of Chihuahua. The State of Chihuahua was vested with jurisdiction and sovereignty over the land in controvery at the proclamation of the Constitution of 1917 and at the time of the expropriation proceedings. The Constitution of 1917 and the agrarian law do not require that compensation be paid prior to or at the time of expropriation, or that payment be then provided for. Claims for compensation under those laws must be urged and collected in the courts of Mexico, which have jurisdiction to determine the amount thereof and who is entitled thereto. [fol. 459] Plaintiffs presented to the International Claims Commission of the United States and Mexico (43 Stats. 1730) a claim for restitution of the lands and for damages. Their title passed to and vested in the State of Chihuahua on March 5, 1925. On March 14, 1925, defendant filed proper application to the State of Chihuahua to purchase lands, including those in controversy, and thereby acquired a right and interest in them. The lands in controversy were thereafter cut off into the United States by the ap-

plicable treaties and by a decision of the International Boundary Commission promulgated March 30, 1930, and dominion and jurisdiction over them passed to the United States of America, giving the District Court jurisdiction over a controversy involving title to them. The plaintiffs are foreigners to Mexico and the defendant is a Mexican citizen.

The former treaties with Mexico followed the usual rule that where gradual changes occur in the course of the bounding river the boundary will follow the river, but not in cases of avulsion. The treaty proclaimed June 5, 1907, (35 Stats. 1863), made the river the boundary also as to "Bancos" theretofore or thereafter created by avulsion unless they were of an area of over 250 hectares or were populated by over two hundred souls, and the Boundary Commission was to determine the status of each Banco and mark it out on the ground. Article IV gave the opinion to an inhabitant of a Banco thus transferred to remain on it or to remove, to keep his property or dispose of it, and to retain his old citizenship or to acquire that of the country to which he was transferred. By the principles of international law, also, the private ownership of the land would not ordinarily be affected by a treaty change to another sovereignty. United States vs. Chaves, 159 U. S. at p. 457; United States vs. Percheman, 7 Pet. at p. 86. The sovereignty and jurisdiction of the United States and the State [fol. 460] of Texas in their respective spheres were established by the treaty and action of the Boundary Commission touching the Guayuco Banco; and the corresponding power and duty of the State and Federal Courts also attached to adjudge private rights and to award possession of the land. The District Court had jurisdiction of the case.

But from the pleadings and the findings of fact it appears that the controversy is between citizens of the United States and a citizen of Mexico, and really turns upon the validity of an act of expropriation done by the Governor of Chihuahua while the land was a part of that State under the authority of a new Constitution of the Republic of Mexico. While in a trespass to try title the plaintiffs must recover on the strength of their own title, its validity is here relatively unimportant since the claim is that whatever their title may have been it was extinguished by the

expropriation proceedings and transferred to the State of Chihuahua, the defendant connecting himself with the title of that State by at least an inchoate grant from it to him as its citizen. If the expropriation is valid, or not questionable, the plaintiffs cannot prevail. We are of opinion that the expropriation must stand as a fait accompli whose validity or justice may not be enquired into by a court of this country, but only by the department of our government charged with the conduct of foreign relations. The great object of the agrarian provisions of the Mexican Constitution of 1917 was to take up and regrant the land held in immense tracts by a few owners, a condition which had resulted in the impoverishment and oppression of the masses of citizens. Irrespective of the finding as a fact of the constitutionality of the law of Chihuahua under which the Governor acted and the regularity of his proceedings thereunder, he did act under color of the Constitution and the law, and being the chief executive of the [fol. 461] State of Chihuahua his sequestration in behalf of his State of the large body of land of which that in controversy is a part can be nothing else than an act of government within its own domain. Although this part of the property seized has passed into the hands of a grantee and has come within the jurisdiction of the United States the correctness and justness of the seizure will not be enquired into by our courts because of international misunderstandings that might be engendered, but such questions are to be handled through diplomatic channels only. Oetgen vs. Central Leather Co., 246 U. S. 297; Ricaud vs. American Metal Co., 246 U. S. 305. That American citizens claim to have been mistreated does not confer jurisdiction, but rather emphasizes the necessity of judicial abstention from the controversy. The courts, as ruled in the cited cases, have jurisdiction to try the title to the property, but must treat as valid the governmental action within its domains by a foreign State. It may be added that on March 1st, 1924, the United States in recognition of their diplomatic character entered into a treaty with Mexico for the settlement by an International Commission of claims such as this one, (43 Stats. 1730), and plaintiffs filed their claim with that Commission. Article VIII provided that all claims, whether filed or not, should be considered as settled and barred, provided that a claim filed has been

heard and decided. There is testimony but no finding that this claim though filed was left undecided by the Commission at its dissolution. If we may thus look beyond the findings, we think that the failure of the Commission to decide the claim does not have the effect of remitting it to the courts, but rather to the Department of State.

But it is earnestly argued that land now within the United States is involved, and that a court of the United States in adjudicating its title should judicially recognize the law of Mexico applicable to the land, and so doing [fol. 462] should hold that an expropriation without concurrent payment of compensation was when it happened and still is unconstitutional and void under the Mexican Constitution of 1917. It is true that where a large territory with its inhabitants is transferred by conquest or by treaty to a new sovereignty that the municipal law of the old sovereignty remains with it until altered by the new, as "the law of the land." The courts afterwards sitting in such territory continue judicially to recognize and apply that law as a part of the law of the forum. Fremont vs. United States, 17 How. at p. 556; United States vs. Perot, 98 U. S. 428; United States vs. Chaves, 159 U. S. 452. But we think the principle has no application to the transfer by the movement of a river of a few acres of land from one sovereignty to another. The law of Mexico up to the date of such transfer does not thereby become a part of the lex fori. It remains foreign law to be proven as a fact when written by production of copies of the Constitution and statutes, and in other respects by the testimony of experts. The writings are to be construed by the judge as other writings in evidence, but if uncertain in meaning or application evidence of experts is again admissible to aid the construction. The Amelia, 1 Cranch. 1; Pierce vs. Indseth, 106 U. S. at p. 551; Liverpool Steam Co. vs. Phoenix Ins. Co., 129 U. S. at p. 445; Slater vs. Mexican National R. R. Co., 194 U. S. 121. Any other rule would not work, for the judge could hardly be truly conversant with the law of Mexico and would have no access to the means of information commonly used to ascertain the law of the forum; and if he were free, as in case of taking judicial notice, to consult any book or person in his discretion the parties litigant would have no means of knowing what he relied on and no sure means of putting the truth before him. In the present

case the Mexican Constitution and statutes were put in evidence. Questions as to their meaning and application [fol. 463] were fully discussed by expert witnesses of both sides who contradicted one another widely. We are of opinion that the Mexican law and its application to this case was a question of fact and rightly disposed of as such by the District Judge, if he had any right to go into the question at all. We are bound by his findings. Upon the main question, most nearly one of law, towit, whether the Constitution of 1917 in its provision "Private property shall not be expropriated except for reasons of public utility and by means of indemnification" requires indemnification to be paid before or at the time of expropriation, we are cited to five decisions of the Supreme Court of Mexico that indemnifications is a matter to be adjudged in court proceedings after expropriation. We have no access to them, which illustrates the impossibility of our judicially noticing Mexican law, but we are told that five such concurrent decisions in Mexico settle a point of law, and we are prepared to believe it. Whatever possibility there may be of recovery by appellants of compensation in the Mexican courts, or of the land by diplomatic process, we think no error appears in the action of the District Court.

Judgment Affirmed.

[fol. 464] JUDGMENT

Extract from the Minutes of April 30th, 1936

No. 7989

A. L. SHAPLEIGH et al.

versus

PASCUAL MIER

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said Dis-

trict Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, A. L. Shapleigh, and others, and the surety on the appeal bond herein, United States Fidelity and Guaranty Company, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 465] MOTION AND ORDER STAYING MANDATE—Filed May 21, 1936

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 7989

A. L. SHAPLEIGH et al., Appellants,

vs.

PASCUAL MIER, Appellee

Motion for Stay of Mandate

Now come A. L. Shapleigh, et al., appellants in the above styled cause by H. R. Gamble, their attorney, and respectfully pray that an order be entered by this court in the above styled cause, staying the issue of the mandate in said cause until and including July 30, 1936, and thereafter until final disposition of said cause by the Supreme Court of the United States, in case on or before July 30, 1936 there should be filed with the Clerk of this court a certificate of the Clerk of the Supreme Court that the certiorari petition, record and briefs have been filed and proof, by affidavit, of notice thereof under Paragraph Three of the Rule 38 of the Supreme Court; and in support of this motion, the said appellant represents unto the court as follows:

1. That on or about April 30, 1936, an order and judgment was entered by this court affirming the judgment of the District Court of the United States for the Western District of Texas in said cause.

2. That under the rules in this court the mandate in said cause will issue on May 22nd, being the twenty-second day after entry of said order and judgment.

3. That appellants intend to file in the Supreme Court of the United States, a petition for certiorari in this cause as provided by the statutes of the United States in such cases [fol. 466] made and provided, and in accordance with the rules of said Supreme Court of the United States and that appellants intend to file said petition for certiorari in good faith and in accordance with the statutes and rules of said Supreme Court hereinbefore mentioned.

4. That this is a suit in trespass to try title to recover a tract of land located in Hudspeth County, Texas; that the appeal in this case was allowed on October 4, 1935 and on the same day appellants filed their bond in the sum of Seven Hundred Fifty Dollars ($750.00), conditioned that if the said appellants should perfect their appeal to effect and answer all costs, if they failed to make their said plea good, then the obligation to be null and void, otherwise to remain in full force and effect, which said appeal bond was approved by the Judge of the District Court of the United States for the Western District of Texas, on the 4th day of October, 1935, and which said bond is still in full force and effect.

5. That in the opinion of the appellants and their counsel, said bond already in force and effect is sufficient fully to protect the interest of appellee in said cause during the period of said stay order or any extension thereof as provided by the rules of this court.

Wherefore, these appellants pray as above set forth that the issue of the mandate of this court in said cause be stayed until and including the 30th day of July, 1936, and thereafter until the final disposition of said cause by the Supreme Court, provided the certificate of the Clerk of the Supreme Court is filed in the office of the Clerk of this Court on or before July 30, 1936, in the manner and form as hereinbefore described, all of which is respectfully asked and prayed for.

Dated at El Paso, Texas, this 19th day of May, A. D. 1936.

A. L. Shapleigh et al., Appellants, by (Signed) H. R. Gamble, Their Attorney.

[fol. 467] Service of notice of the filing of this petition is hereby waived and no objection is interposed as to the staying of this mandate as above prayed for.

Pascual Mier, Appellee, by (Signed) Walter S. Howe, His Attorney.

[fol. 468] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 7989

A. L. SHAPLEIGH et al., Appellants,

versus

PASCUAL MIER, Appellee

On consideration of the application of the appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 21st day of May, 1936.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 469] CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 453 to 468 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 7989, wherein A. L. Shapleigh, et al., are appellants, and Pasqual Mier is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 452 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 26th day of May, A. D. 1936.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1936.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

Supreme Court of the United States

October Term, 1935

No.....

A. L. SHAPLEIGH, et al,

Petitioners,

vs.

PASCUAL MIER.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION

A. L. Shapleigh and others, plaintiffs in the Trial Court, through their counsel, pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered in the above cause on April 30, 1936, affirming the decision of the District Court of the United States for the Western District of Texas.

STATEMENT

This is a suit in trespass to try title for the recovery of a tract of land known as El Guayuco Banco, containing 136.6 hectares or 337.6 acres, lying on the bank of the Rio Grande River in Hudspeth County, in the El Paso Division of the Western District of Texas. Plaintiffs contend that El Guayuco Banco was cut from Mexico by an avulsive

change in the course of the Rio Grande some time in the year 1926, as found by the International Boundary Commission by its minute No. 121, promulgated March 3, 1930 (R. 9), and that it was cut from La Santisima, a tract of about 95,000 acres, located in the State of Chihuahua, Mexico, to which plaintiffs had title by a chain beginning with the confirmation by the President of Mexico in 1864, of a grant by the Legislature of the State of Chihuahua in 1859 to Laureano Munoz (R. 19), and running down by successive transfers to a deed dated February 13, 1897, by Bennett H. Davis to A. L. Shapleigh, Charles H. Peck and Thomas Ranken, Jr. (R. 114), and that the plaintiffs other than A. L. Shapleigh are the successors in title of Charles H. Peck and Thomas Ranken, Jr. In addition, plaintiffs pleaded the Mexican Statutes of Limitation of ten years in good faith and twenty years in bad faith. (R. 423). Defendant's title is based on a proceeding whereby the Governor of Chihuahua, on March 5, 1925, undertook to expropriate La Santisima (R. 253), and an instrument dated February 20, 1930, whereby the Governor of Chihuahua attempted to convey El Guayuco Banco to the defendant (R. 276). A stipulation in writing waiving a jury was filed. At the trial, all of the documents claimed by the parties to constitute their muniments of title were admitted in evidence over objection, and translation of all Mexican law offered by either party was admitted in evidence without objection as to accuracy of translation, and will be found in the record. The uncontradicted evidence showed that payment for the land so taken was never made or tendered (R. 382, 387). The District Court found that plaintiffs had good record title to the land in controversy when the Mexican Constitution providing for an Agrarian Law and expropriation proceedings was adopted on May 1, 1917 (R. 434); that the plaintiffs never had title by limitation (R. 440); that the expropriation proceedings culminating in the decree of the Governor of Chihuahua of March 5, 1925,

were valid and divested plaintiffs of their title (R. 438); that payment for land expropriated for public use in Mexico is not required to be made in advance or at the time of such expropriation (R. 439); that claim for compensation for land expropriated under the laws of Mexico must be sought through the Courts of Mexico or if sought by foreigners, may be sought through the political department of their government (R. 440); that the petition of the defendant, dated March 14, 1925, directed to the Governor of the State of Chihuahua asking that defendant be awarded a portion of the tract called La Santisima, created a vested interest in the applicant (R. 440); that the portion of La Santisima called El Guayuco Banco was cut from Mexico to the United States some time in the year 1926 (R. 437); and it was the judgment of the Court that the plaintiffs recover nothing and the defendant go hence (R. 433). The Circuit Court of Appeals sustained the judgment of the District Court (R. 456).

QUESTIONS PRESENTED

1. Was the expropriation proceeding valid whereby the Governor of the State of Chihuahua, Mexico, took from plaintiffs their land there located, valid record title to which the District Court held was at the time in them, a portion of such land being afterward shifted into the United States by an avulsive change in the course of the Rio Grande, constituting the boundary between the two countries, and being here the subject of controversy?

2. Could the Governor of the State of Chihuahua, Mexico, lawfully take from American owners their land located in that State, without indemnification?

3. Could the Governor of the State of Chihuahua, Mexico, lawfully convey title to land which, at the time of the attempted conveyance, was in the United States?

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred:

1. In holding that the District Court correctly directed judgment for the defendant.

2. In holding that the expropriation proceeding of the Governor of Chihuahua, Mexico, was effective to divest plaintiffs of their title to the land in question.

3. In holding that plaintiffs could lawfully be deprived of their Mexican land without indemnification.

4. In holding that the Governor of Chihuahua, Mexico, could lawfully convey to the defendant title to land located in the United States at the time of such attempted transfer.

5. In holding that in a suit to recover title to and possession of land now in the United States, formerly in Mexico, plaintiffs' only remedy is a suit in the Courts of Mexico for compensation for the loss of the land.

6. In holding that the Courts of the United States may not inquire into the validity of a Mexican expropriation proceeding whereby American citizens are deprived of their Mexican land without compensation.

7. In holding that in a trespass to try title suit, such as this, the validity of plaintiffs' title is ever relatively unimportant, because if the defendant should prove to be a trespasser the plaintiff may recover on a mere showing of prior possession.

8. In holding the principle that the law goes with the land when it is transferred from one sovereignty to another has no application to the transfer by the movement by the river of a few acres of land from one sovereignty to another.

9. In holding that the Mexican Law and its application

to this case was a question of fact and rightly disposed of as such by the District Judge.

10. In holding that land located in the United States may be recovered by diplomatic proceedings.

11. In holding that the defendant connected himself with the title of the State of Chihuahua to the land in question by an inchoate grant.

REASONS FOR GRANTING THE WRIT

1. The effect of the holdings of the District Court and the Circuit Court of Appeals is to relegate the plaintiffs to the Courts of Mexico or to diplomatic channels. Here we seek the land itself, not compensation for the loss of it. The land is in the United States, therefore the Courts of Mexico are without jurisdiction. The determination of the title to land in the United States is confined exclusively to the Judicial Department of the Government. Therefore, it would be futile to ask relief through diplomatic channels. The result is that plaintiffs are without a remedy, which is contrary to the fundamental law of the land. Such a situation calls for an exercise of this Court's power of supervision as provided for in Rule 38 of this Court.

2. This Court and many other Courts, both State and Federal (a list will be found in the supporting brief at page 11) have examined into and passed upon the validity of acts of foreign governments, legislative, executive and judicial, and when the Circuit Court of Appeals says in this case that such action on its part is inhibited by *Oetjen v. Central Leather Co.*, 246 U. S. 297, and *Ricaud v. American Metal Co.*, 246 U. S. 305, there remains in doubt the proper interpretation of such cases, and there remains in doubt the rights of American citizens in foreign countries.

3. The Circuit Court of Appeals held that the interpreta-

tion by the District Court of the Constitution and Laws of Mexico resulted in findings of fact binding on it, and not in conclusions of law subject to review on appeal. The authorities, State and Federal, are in hopeless confusion on this point. The opinion of the New York Court of Appeals in *Bank of China vs. Morse,* 168 N. Y. 458, 56 L. R. A. 139, is to the contrary. Many authorities are there cited. Among them, a decision of this Court, *Hanley vs. Donoghue,* 116 U. S., page 1, 29 Law Ed. 535, 6 Supreme Court Reports 242. The opinion of the Circuit Court of Appeals for the Second Circuit in *Compania Transcontinental de Petroleo, S. A., vs. Mexican Gulf Oil Company,* 292 Fed. 846, seems to support the holding of the Circuit Court of Appeals in this case. However, we think the four decisions of this Court, cited by the Circuit Court of Appeals in this case, are against it, rather than in its favor. They are, *The Amelia,* 1 Cranch 1; *Pierce vs. Indseth,* 106 U. S. 551; *Liverpool Steam Co. vs. Phoenix Insurance Co.,* 129 U. S. 445; *Slater vs. Mexican National R. R. Co.,* 194 U. S. 121. But that only adds to the lack of harmony and should invite the interposition of this Court.

4. Under the holdings of the lower Courts American citizens may lawfully be deprived of their Mexican land without compensation. That is in conflict with International Law, the treaty between the United States and Mexico, the Mexican Constitution, and the Chihuahua Statute, and requires the intervention of this Court.

5. The Circuit Court of Appeals held the well-established doctrine that where land is transferred from one sovereignty to another the law follows the land has no application to a small acreage. We believe that to be an incorrect interpretation of *Fremont vs. United States,* 17 How. 556, and other decisions of this Court. It is a matter of far-reaching importance. It will affect every Banco case, of which there

will doubtless be many. The confusion should be clarified by this Court.

WHEREFORE, it is respectfully submitted that this petition should be granted.

J. F. McKENZIE,
H. R. GAMBLE,

Attorneys for Petitioners.

IN THE

Supreme Court of the United States

October Term, 1935

No.....

A. L. SHAPLEIGH, et al,

Petitioners,

vs.

PASCUAL MIER.

BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The memorandum decision of the District Court (unreported) is in the record at page 428. Its findings of fact and conclusions of law (also unreported) are in the record at page 434. The opinion of the United States Circuit Court of Appeals (unreported) is in the record at page 456.

JURISDICTION

The judgment of the Circuit Court of Appeals affirming the judgment of the District Court was entered April 30, 1936 (R. 464). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

ARGUMENT

I. The writ should be granted because the Circuit Court of Appeals committed reversible error in holding that it could not inquire into the validity of the Mexican expropriation proceeding whereby the plaintiffs lost the land in controversy.

The Circuit Court of Appeals said that the Courts must treat as valid governmental action within its domain by a foreign state, and in support of that conclusion cited *Oetjen vs. Central Leather Co.*, 246 U. S. 297, and *Ricaud vs. American Metal Co.*, 246 U. S. 303. The holding in those cases is the law only in similar situations. In both cases the act, the validity of which the American Court declined to examine, was the act of the commander of a revolutionary force, while actually engaged in warfare, in making a siezure for the purpose of defraying the expense of further hostilities, the revolutionaries being afterward recognized as the government *de jure*, and the seizure made was authorized by the Articles of War, and it was not contended that there was any authority for it under the civil law. It is not believed this Court intended the doctrine there pronounced to be extended beyond the facts there found. The fact situation here does not remotely resemble the one there involved. Here the seizure was made by a civil officer in time of peace, when the government was stable and under the guise of the authority of law and for the ostensible purpose of carrying out the provisions of the Mexican Constitution.

The Courts of the United States, both State and Federal, have many times examined the acts of foreign nations, and have frequently held them invalid in protecting the rights of American citizens abroad. For example, see the following cases:

United States vs. Arredondo, 6 Peters 691, 748;
United States vs. Percheman, 7 Pet. 117;
Delassus vs. United States, 9 Pet. 117;
United States vs. Reynes, 9 Howard 127, 148;
Davis vs. Police Jury, 9 Howard 280, 289;
United States vs. Sutter, 21 Howard 170;
United States vs. Rose, 23 Howard 262;
Donaldson vs. Dodd, 12 Tex. 381, 394;
State vs. Bustamente, 47 Tex. 320, 322;
Kenedy Pasture Co. vs. State of Texas, 111 Tex. 200, 230.

Even the validity of a foreign judgment will be examined by a local Court:

Hilton vs. Guyot, 159 U. S. 113, 40 Law Ed. 95;
Banco Minero vs. Ross, 172 S. W. 711;
San Lorenzo Title & Improvement Co. vs. City Mortgage Co., 48 S. W. (2nd) 310;
San Lorenzo Title & Improvement Co. vs. Clardy, 48 S. W. (2nd) 315;
San Lorenzo Title & Improvement Co. vs. Caples, 48 S. W. (2nd) 329;
Willis vs. First Real Estate & Investment Co., 67 F (2nd) 671.

It seems preposterous that defendant can set up as his sole source of title the expropriation decree, and in the same breath say this Court cannot inquire into its validity because it is the work of a foreign nation. Defendant should be estopped to take that position; since he offers the expropriation decree, good faith requires that it should be subject to the scrutiny of the Court.

II. The writ should be granted because the Circuit Court of Appeals committed reversible error in holding that it was bound by the Trial Court's interpretation of Mexican Law.

The Circuit Court of Appeals said:

> "We are of the opinion that the Mexican law and its application to this case was a question of fact and rightly disposed of as such by the District Judge, if he had any right to go into the question at all. We are bound by his findings."

It is well settled that foreign law must be proved as a fact, but it is consistent with the weight of authority that the interpretation of foreign law and its application to the facts of the case on trial are for the Judge and are matters of law, subject to review on appeal.

The New York Court of Appeals in *Bank of China, et al. vs. Morse*, 168 N. Y. 458, 56 L.R.A. 139, said:

> "That, when it becomes necessary to establish the law of a foreign country, it must be proved, as facts are proved, there is no doubt; but when, after such proof is given, the questions involved depend upon the construction and effect of a statute or judicial opinion, we think those questions are for the court, and not questions of fact at all."

The Court cited the following authorities:

Chase's Stephen, Ev. 146;
Hanley vs. Donoghue, 116 U. S. 1, 29 L. Ed. 535, 6 Sup. Ct. Rep. 242;
Ufford vs. Spaulding, 156 Mass. 65; 30 N. E. 360;
Molson's Bank vs. Boardman, 47 Hun. 135; Story Confl. L. Sec. 638; 1 Greenl. Ev. Sec. 486;
Kline vs. Baker, 99 Mass. 253, 255;
Shoe & Leather Nat. Bank vs. Wood, 142 Mass. 563, 568, 8 N. E. 753.

Other authorities to the same effect are:

Inge vs. Murphy, 10 Ala. 885;
The State vs. Jackson, 13 N. C. 563;
Consequa vs. Millings, 6 Fed. Cases 336, 337 (Pet. C. C. 225, case No. 3128);
Williams vs. State, 11 S. W. 481;
Sidwell vs. Evans, 1 Pen. & W. 383, 21 Am. Dec. 387;
Alexander vs. Pennsylvania Co., 48 Ohio St. 623, 30 N. E. 69;
Wheeler vs. St. Paul Crushed Stone Co., 191 Ind. 75, 132 N. E. 1;
Rood vs. Horton, 231 P. 450, 132 Wash. 82;
Fourth Nat. Bank of Montgomery, Ala., vs. Bragg, 102 S. E. 649, 127 Va. 47, 11 A.L.R. 1034;
Tarbell vs. Grand Trunk Ry. Co., 118 A. 484, 46 Vt. 170, 34 A.L.R. 1444;
Saloshin vs. Houle (New Hampshire), 155 A. 47;
Scaly vs. Missouri, K. & T. Ry. Co., 114 P. 1077, 84 Kan. 879, 41 L.R.A. (N. S.) 500;
Osgood Co. vs. Wilkinson, 191 N. E. 779, 265 N. Y. 70.

The only Federal case we have been able to find which seems to be to the contrary is *Compania Transcontinental de Petroleo, S. A. vs. Mexican Gulf Oil Co.* (C.C.A. 2nd) 292 Fed. 846, and in our opinion the doctrine there laid down is not supported by the authorities cited.

In an earlier part of the opinion of the Circuit Court of Appeals in this case, it said in speaking of the law of Mexico:

> "It remains for the law to be proved as a fact when written by production of copies of the constitution and statutes, and in other respects by the testimony of experts. The writings are to be construed by the Judge as other writings in evidence, but if uncertain in meaning or application, evidence of experts is again admissible to aid construction."

That statement of the law is not very clear, but it is more nearly correct than the statement previously quoted and

which was followed by the Court. We believe that the cases cited by the Circuit Court of Appeals in connection with the foregoing quotation support our contention that the interpretation given by the Trial Court to foreign constitutions and statutes is matter of law subject to review on appeal. The cases are as follows:

The Amelia, 1 Cranch 1;
Pierce vs. Indseth, 106 U. S. 551;
Liverpool Steam Co. vs. Phoenix Ins. Co., 129 U. S. 445;
Slater vs. Mexican National R. R. Co., 194 U. S. 121.

In each of the foregoing cases, the Appellate Court gave its own interpretation to the foreign law involved.

III. The writ should be granted because the Circuit Court of Appeals committed reversible error in upholding the validity of the Mexican expropriation proceeding whereby the land in controversy was taken from the Plaintiffs.

The taking of plaintiffs' land was unlawful

A. Because the expropriation proceedings under which it was taken was invalid; and

B. Because the land was never paid for.

A. The expropriation proceeding was invalid

1. Because the Governor was without authority to conduct it;

2. Because only holdings greater than plaintiffs' were subject to expropriation; and

3. Because only the excess was subject to expropriation and plaintiffs' entire holdings were expropriated.

B. The failure to pay caused failure to divest title because:

1. Contrary to International Law;
2. Contrary to the treaty between the United States and Mexico;
3. Contrary to the Mexican Constitution; and
4. Contrary to the Chihuahua Statute.

A (1) As to the invalidity of the expropriation proceeding, a portion of Article 14 of the Mexican Constitution of 1917 is as follows (R. 399):

> "No person shall be deprived of life, liberty, property, possessions or rights without due process of law instituted before a duly created court, in which the essential elements of procedure are observed in accordance with previously existing laws."

The Governor of the State of Chihuahua was no kind of court. Therefore, he had no authority to expropriate.

A (2) Moreover, the Agrarian Law of the State of Chihuahua allows an individual to own a maximum of 40,000 hectares (R. 329) and a hectare consists of 2.47 acres. La Santisima embraced an area of 95,000 acres and the record title was in the name of three persons and it was, therefore, not subject to expropriation. (R. 91.)

A (3) But in any event, the entire holdings of the plaintiffs were not subject to expropriation, only the excess above the amount allowed by law to be held. That only the excess is to be taken is iterated and re-iterated in the Agrarian Law. It appears on pages 329, 330, 335 and 337 of the printed record and twice each on pages 331, 332, 333 and 334. In spite of the law, the Governor dispossessed the plaintiffs of their entire holdings. (R. 267.)

B (1) On the question of failure to pay causing failure to divest title, the expropriation of plaintiffs' land was, first, contrary to the principles of International Law, and established custom.

International Law is a part of the law of the land. Moore: *International Law Digest,* Volume 1, page 10; *The Nereide,* 9 Cranch 388. The rights of aliens in Mexico to real property is a subject of International Law. By that law a citizen of the United States cannot be deprived of property without due process of law, which requires the payment of just compensation. The attribute of sovereignty by virtue of which a nation takes private property for public use is known as "eminent domain". Vattel, in his *"Law of Nations",* Chitty's Edition, Book I, Chapter 20, page 112, states:

> "If the sovereign disposes of the public property by virtue of his eminent domain, the alienation is valid as having been made with sufficient power. When, in case of necessity, he disposes in like manner of the possessions of the community or an individual, the alienation will, for the same reason, be valid. But justice requires that this community or this individual be indemnified at the public charge; and if the treasury is not able to bear the expense, all the citizens are obliged to contribute to it; for the burdens of a state are to be supported equally, or in a just proportion."

In *Mead vs. United States* (2 United States Court of Claims Reports, pages 224, 275) it was held:

> "The right of the government to take for public use or public welfare the property of a citizen by virtue of the right of eminent domain, and the obligation to make compensation to the citizen for it, are universally admitted as concurrent and correlative powers and duties. They are co-existent and co-extensive."

The text writers on the subject lay down the same doctrine. *Mills on Eminent Domain,* Section 130, says:

"Payment must be made before entry, where the owner insists on this right. An entry without payment is a trespass."

Lewis on Eminent Domain, Third Edition, Section 681, says:

"Any interference with the rights of property is a taking. The occupation of property is clearly such an interference, and should not be permitted until the compensation is paid."

The general and established practice is obviously the same.

"It has long since become the well settled rule that property cannot be taken for public use without adequate compensation, even on the theory that it has been abandoned by the owner."

10 R. C. L., p. 124;
Pumpelly vs. Canal Co., 13 Wall. 166, 20 L. Ed. 557;
Garrison vs. New York, 21 Wall. 196, 22 L. Ed. 612;
United States vs. Great Falls, 112 U. S. 645, 5 Supreme Court 306, 28 L. Ed. 846;
Great Falls vs. Garland, 124 U. S. 581, 8 S. Ct. 631, 31 L. Ed. 527
Searl vs. School District, 133 U. S. 553, 10 S. Ct. 374, 33 L. Ed. 740;
Monongahela Navigation Co. vs. United States, 148 U. S. 312, 13 S. Ct. 622, 37 L. Ed. 463;
Bauman vs. Ross, 167 U. S. 548, 17 S. Ct. 966, 42 L. Ed. 270;
Kennedy vs. Indianapolis, 103 U. S. 599, 26 L. Ed. 550.

"Any statute is unconstitutional which enables the donee of the power of eminent domain to take property without first paying compensation therefor in money."

16 Tex. Jur., p. 573;
Mud Creek Irr., etc. Co. vs. Vivian, 74 Tex. 170, 173, 11 S. W. 1078;
Shipley vs. Dallas County Levee Improvement Dist. No. 6, 233 S. W. 556, 561;

Barrett vs. Metcalfe, 33 S. W. 758.

It will thus be seen that International Law and Established Usage are in accord and forbid the taking of private property for public use without compensation.

B (2) The expropriation of El Guayuco Banco was in violation of the Treaty between the United States and Mexico.

The Government of Mexico, in entering into the Treaty of September 8, 1923, with the United States, recognized the rights of American citizens to receive just compensation for property expropriated before they could be divested of their legal rights.

By Article IX, second paragraph, of the Convention creating the General Claims Commission, it was provided:

> "In any case the commission may decide that international law, justice and equity require that a property or right be restored to the claimant in addition to the amount awarded in any such case for all loss or damage sustained prior to the restitution. In any case where the Commission so decides the restitution of the property or right shall be made by the Government affected after such decision has been made, as hereinbelow provided. The Commission, however, shall at the same time determine the value of the property or right decreed to be restored and the Government affected may elect to pay the amount so fixed after the decision is made rather than to restore the property or right to the claimant. In the event the Government affected should elect to pay the amount fixed as the value of the property or right decreed to be restored, it is agreed that notice thereof will be filed with the Commission within thirty days after the decision and that the amount fixed as the value of the property shall be paid immediately. Upon failure so to pay the amount the property or right shall be restored immediately."

This recognized, therefore, the right of the claimant, the plaintiff in the present case, to have his land back, unless Mexico elected to pay for it, in which case payment had to be immediate.

B (3) The failure to pay plaintiffs for their land taken was in violation of the provisions of the Mexican Constitution.

It seems to us that plaintiffs' rights should be determined by the provisions of the Mexican Constitution of 1857, since it was in effect at the time plaintiffs acquired title to the property in dispute in 1897. Article 27 of that Constitution provides that private property shall not be taken without the consent of the owner, "Indemnification having been made." (R. 397.) There can hardly be a shadow of a doubt that such language means previous payment, and that the owner does not lose his title until he gets his money. But if the Court should hold that we are to be governed by the provisions of the Constitution of 1917, the result would be the same. There is no substantial difference in the two constitutions in this respect. The Constitution of 1917, Article 27, says (R. 401):

> "Private property shall not be expropriated except for reasons of public utility and *by means of indemnification.*"

That both constitutions require indemnification before title passes, seems too clear to need the aid of construction.

B (4) A Statute of the State of Chihuahua forbids expropriation without compensation.

Article 736 of the Civil Code of the State of Chihuahua reads as follows (R. 91):

> "The property of any person cannot be occupied without the consent of the owner unless by cause of public utility and previous indemnification."

This point is probably unimportant except that a certain situation would arise which seems to us practically impossible, namely, that this Court should hold expropriation without indemnification in harmony with the Mexican Constitution. In that event the taking of our land would still be in violation of the State Statute and surely, it cannot be contended that the Mexican Constitution forbids such a Statute. If this Court should hold that the taking of our land without paying for it is in violation of the Mexican Constitution, the fact that it is also a violation of a Mexican State Statute simply emphasizes the rape of the plaintiffs.

Giving the most liberal interpretation to any authority that may be cited by defendant, it is confidently believed that no case can be found in the books which goes further than to hold that in the absence of payment of cash at the time of expropriation, there must be at least a guarantee of payment and if actual payment be not made within a reasonable time, title reverts to the owner. In this case there was no guarantee, and surely plaintiffs could not be expected to wait longer than ten years to get their title back, if they ever lost it.

In another of these so-called "banco" cases the Circuit Court of Appeals for the Fifth Circuit, in *Willis vs. First Real Estate and Investment Company,* 68 F. (2nd) 671, said:

> "The proceeding under which he (the defendant in this case) claims was a special one. No jurisdictional presumptions may be entertained in regard to it. The proof must show the jurisdiction. This is required of judgments and other official acts entered in special proceedings, even in domestic ones."

The expropriation decree of the Governor of Chihuahua was not a judgment of a court, but an ex parte administrative act. It was not a general law, but a special decree purporting to affect individual property. It was, therefore, a special proceeding, and must show compliance with the

Constitution and the Special Laws governing such proceedings. The burden was on the defendant to show the validity of the expropriation proceeding and he wholly failed to carry the burden.

Since the District Court was not bound by the interpretation given by the Mexican Courts to the Mexican Law, it should have followed this Court, which provided a perfect precedent.

The provision of the Indiana Constitution construed by the Supreme Court of the United States in *Kennedy vs. Indianapolis, supra,* is substantially the same as the provision of the Mexican Constitution here involved. It provided that no man's property should be taken or applied to public use "without the consent of his representatives, or without a just compensation being made therefor."

It will be observed the organic law did not specifically state whether indemnification should be previous, simultaneous, or subsequent. This Court said:

> "It seems to us that both on principle and authority the rule is, under such a constitution as that of Indiana, that the right to enter on and use the property is complete, as soon as the property is actually appropriated under the authority of law for a public use, but that the title does not pass from the owner without his consent, until just compensation has been made to him."

Only one other point need be considered. But we think that point is of the utmost importance. The deed conveying the land in controversy to the defendant was executed by the Governor of the State of Chihuahua February 20, 1930. (R. 277.) The land had passed to the United States four years previously, some time in 1926. (R. 437.) To cure this otherwise fatal defect, defendant claimed that his rights under the deed began with the filing of his petition,

March 14, 1925. Both lower Courts upheld that contention, we think without rhyme or reason. No authority was cited and none can be found. The holding was plainly contradictory to the language of both instruments. Neither the application (R. 269) nor the acknowledgment of its receipt (R. 273) purport to vest any rights in defendant, and the deed (R. 277) does not purport to have any retroactivity. The deed is in much the same form as an American deed. It recites a cash consideration and a present conveyance. At that time the land was in the United States and the Governor of Chihuahua was without a vestige of authority to do anything affecting it. This is important because under the Texas Law of Trespass to try title, if the defendant is shown to be a trespasser, plaintiff may recover on a mere showing of prior possession. Therefore, it is no answer to say if we do not have title why are we concerned about defendant's title. Both lower Courts committed fundamental error when they held that the Governor of Chihuahua, Mexico, could lawfully convey to the defendant the land in controversy at a time when it was in the United States.

Grants made by the Spanish authorities in territory which, upon the subsequent settlement of a disputed boundary line, was determined to belong to one of the United States, are void. *Robinson vs. Minor,* 10 Howard 627, cited in Moore's Int. Law Digest I, 746.

The provision in a treaty that the inhabitants of a ceded territory shall be protected in the free enjoyment of their property, does not extend to mere *inchoate* rights which are of imperfect obligation and affect only the conscience of the new sovereign. *Dent vs. Emmeger,* 14 Wall. 308.

And it was fundamental error for the Circuit Court of Appeals to hold the principle that the law goes with the land when it is transferred from one soverignty to another

has no application to the transfer by the movement of the river of a few acres of land from one sovereignty to another.

Spanish laws prevailing in Louisiana before its cession, and affecting titles to land there, *must be judicially noticed* by the Court. *Their existence is not matter of fact to be tried by a jury. U. S. vs. Turner,* 11 Howard 663; *U. S. vs. Chavez* (1895) 159 U. S. 452, cited in Moore, Int. Law Digest, I, 333.

The record in this case is in shape for this Court to pass on every issue involved. A jury was waived. The District Court filed a memorandum opinion, entered a judgment, and later filed findings of fact and conclusions of law. All the rulings of the Court in the progress of the trial of the cause that were against the interests of the plaintiffs to-wit: the rulings admitting in evidence the alleged muniments of title of the defendant, were excepted to at the time and duly presented by a bill of exceptions and may be reviewed upon appeal. There is no Statute or rule of Court requiring such rulings to be assigned as error. It was contended by the plaintiffs that the muniments of title of the defendant were null and void and of no force or effect, and the action of the Court in upholding their validity was assigned as error, and if they were invalid of course they were not admissible in evidence for any purpose. In other words, when we assign as error the holding by the Trial Court that the instruments were valid, the assignment and the error necessarily include the collateral error committed in admitting invalid instruments.

The wholesomeness of the Mexican Agrarian Law and the expropriation proceeding thereunder has no bearing on any issue in this case, and is no concern of the courts. The question is whether the Mexicans tracked the law in plundering the plaintiffs. So far as sympathy is concerned, at

least as much could be said for the plaintiffs as for the defendant, if it had any proper place in this proceeding. There is nothing in the record to indicate that the plaintiffs did not acquire the land in controversy in a lawful manner and for an adequate consideration, and they certainly lost it through a species of governmental theft.

CONCLUSION

It is respectfully submitted that the interpretation of the Mexican Law by the lower Courts was incorrect and deprived plaintiffs of valuable rights to which they were entitled, and therefore, certiorari should be granted.

J. F. McKENZIE,
H. R. GAMBLE,

Attorneys for Petitioners.

June 19, 1936.

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IN THE

Supreme Court of the United States

October Term, 1936.

No. 125

A. L. SHAPLEIGH, et al.,
Petitioners,

vs.

PASCUAL MIER.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

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BRIEF FOR THE PETITIONERS

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IN THE

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On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

---

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The memorandum decision (unreported) of the District Court of the United States for the Western District of Texas is in the record at page 428. The findings of fact and conclusions of law are in the record at page 434. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit, (R. 456) is reported in 83 Federal (2nd) 673.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 21, 1936. (R. 468) Petition for certiorari was

filed June 19, 1936. Certiorari was granted October 12, 1936. (R.....) Jurisdiction is conferred on this court by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Was the expropriation proceeding valid whereby the Governor of the State of Chihuahua, Mexico, took from plaintiffs their land there located, valid record title to which the District Court held was at the time in them, a portion of such land being afterward shifted into the United States by an avulsive change in the course of the Rio Grande, constituting the boundary between the two countries, and being here the subject of controversy?

2. Could the Governor of the State of Chihuahua, Mexico, lawfully take from American owners their land located in that State, without indemnification?

3. Could the Governor of the State of Chihuhua, Mexico, lawfully convey title to land which, at the time of the attempted conveyance, was in the United States?

STATEMENT OF THE CASE.

This is a suit in trespass to try title filed April 4, 1933, wherein the plaintiffs (here the petitioners) seek the recovery of a tract of land known as El Guayuco Banco, located in Hudspeth County, Texas, about seventy miles from El Paso, and about ten miles from McNary, a station on the Southern Pacific Raliroad, containing 136.6 hectares, or 337.6 acres. (R. 1.)

Plaintiffs contend that El Guayuco Banco was cut from Mexico by an avulsive change in the course of the Rio

Grande sometime in the year 1926, as found by the International Boundary Commission by its Minute No. 121, promulgated March 3, 1930, (R. 9) and that it was cut from La Santisima, a tract of about ninety-five thousand acres to which plaintiffs had title by a chain beginning by confirmation by the President of Mexico in 1864, of a grant by the Legislature of the State of Chihuahua in 1859 to Laureano Munoz (R. 19) and running down to a deed dated February 13, 1897, by Bennett H. Davis to A. L. Shapleigh, Charles H. Peck and Thomas Ranken, Jr. (R. 114). In addition, plaintiffs pleaded the Mexican Statute of Limitations of ten years in good faith, and twenty years in bad faith. (R. 423.) The documents going to make out plaintiffs' title are described in their abstract as follows:

1. Minute No. 121, International Boundary Commission, dated March 3, 1930.
2. Report of Engineers of International Boundary Commission, dated February 24, 1930.
3. International Boundary Commission map of El Guayuco Banco.
4. Document dated November 29, 1864, whereby President of Mexico ratified in Laureano Munoz title of ownership of La Santisima.
5. Deed of sale of La Santisima by the heirs of Laureano Munoz to Ignacio Macmanus, dated June 1, 1886.
6. Document showing recording in Juarez, Chihuahua, Mexico, June 10, 1886, of sale of La Santisima by the heirs of Laureano Munoz to Ignacio Macmanus.
7. Instrument of sale dated December 6, 1886, conveying La Santisima from Ignacio Macmanus to Bennett H. Davis.
8. Document showing recording in Juarez, Chi-

huahua, Mexico, May 10, 1887, of sale of La Santisima by Ignacio Macmanus to Bennett H. Davis.

9. Releases and acknowledgment of satisfaction of mortgages on La Santisima.

10. Deed dated February 13, 1897, whereby Bennett H. Davis conveyed La Santisima to Alfred L. Shapleigh, Charles H. Peck, and Thomas Ranken, Jr.

11. Deed dated January 2, 1924, confirming sale by Ignacio Macmanus to Bennett H. Davis and describing La Santisima by metes and bounds.

12. Will of Charles H. Peck.

13. Decree of Circuit Court, St. Louis, Missouri, probating will of Charles H. Peck, and appointing as Trustees, Stephen Peck, John A. Peck, Rebecca Dusenbery, and Belle Peck Bryant.

14. Appointment of Claude B. Ricketts and Charles J. M. Donaldson Trustees in place of Stephen Peck.

15. Appointment of Elizabeth P. Peck and Max M. Bryant as trustees in place of Claude B. Ricketts and Charles J. M. Donaldson.

16. Certificate of death of John A. Peck.

17. Statement of devolution of title to interests of Thomas Ranken, Jr., in La Santisima.

18. Will of Hugh R. Lyle, Deceased.

19. Letters Testamentary to Mississippi Valley Trust Company.

20. Certificate of incorporation of the Mississippi Valley Trust Company, St. Louis, Missouri.

21. Permit for Alfred Lee Shapleigh, Charles H. Peck, Thomas Ranken, Jr., et al, to own property in Mexico.

22. Mexican Statute of Limitation.

Defendant's title is based on a proceeding whereby the Governor of Chihuahua on March 5, 1925, undertook to expropriate La Santisima (R. 253) and an instrument dated February 20, 1930, whereby the Governor of Chihuahua attempted to convey El Guayuco Banco to the defendant. (R. 276.)

Defendant went to trial on an answer filed August 30, 1933, consisting of a general demurrer and a plea of "Not Guilty". (R. 6.) He also filed an abstract of title, and a brief description of the documents on which he relies is as follows:

1. The Decree of Expropriation by the Governor of Chihuahua March 5, 1925, of the latifundium composed of part of the tract known as La Santisima, and other tracts.
2. The Deed from the Governor of Chihuahua to the defendant, dated February 20, 1930, purporting to convey, among other properties, El Guayuco Banco.
3. A map of El Guayuco Banco.
4. A document dated February 17, 1930, whereby the Governor of Chihuahua undertook to give possession to the Defendant of El Guayuco Banco, among other properties.
5. Correction Deed dated May 20, 1930.
6. A map of La Santisima signed by M. Contreras, Jr., December 5, 1929.
7. Minute No. 121, International Boundary Commission, dated March 3, 1930.
8. Report of Engineer of International Boundary Commission, dated February 24, 1930.
9. International Boundary Commission map of El Guayuco Banco.

10. Defendant's application to acquire a portion of La Santisima, dated March 14, 1925.

11. Answer of the Governor of Chihuahua to Defendant's application to acquire a portion of La Santisima, dated April 15, 1925.

A stipulation in writing waiving a jury was filed.

The District Court found that plaintiffs had good record title to the tract of land located in the State of Chihuahua, Mexico, known as La Santisima, when the Mexican Constitution providing for an agrarian law and expropriation proceedings was adopted on May 1, 1917 (R. 434); that the plaintiffs never had title by limitation (R. 440); that the expropriation proceedings culminating in the decree of the Governor of Chihuahua of March 5, 1925, were valid and deprived plaintiffs of their title (R. 438); that the petition of the defendant, dated March 14, 1925, directed to the Governor of the State of Chihuahua asking that he be awarded a portion of the tract called La Santisima created a vested interest in the applicant (R. 440); that the portion of La Santisima called El Guayuco Banco was cut from Mexico to the United States some time in the year 1926 (R. 437); and it was the judgment of the court that the plaintiffs recover nothing, and the defendant go hence (R. 433).

The Circuit Court of Appeals for the Fifth Circuit affirmed the judgment of the district court. This court is asked to reverse the judgment in favor of the defendant and render judgment in favor of plaintiffs.

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred:

1. In holding that the District Court correctly directed judgment for the defendant.

2. In holding that the expropriation proceeding of the Governor of Chihuahua, Mexico, was effective to divest plaintiffs of their title to the land in question.

3. In holding that plaintiffs could lawfully be deprived of their Mexican land without indemnification.

4. In holding that the Governor of Chihuahua, Mexico, could lawfully convey to the defendant title to land located in the United States at the time of such attempted transfer.

5. In holding that in a suit to recover title to and possession of land now in the United States, formerly in Mexico, plaintiffs' only remedy is a suit in the Courts of Mexico for compensation for the loss of the land.

6. In holding that the Courts of the United States may not inquire into the validity of a Mexican expropriation proceeding whereby American citizens are deprived of their Mexican land without compensation.

7. In holding that in a tresspass to try title suit such as this, the validity of plaintiffs' title is ever relatively unimportant, because if the defendant should prove to be a trespasser the plaintiff may recover on a mere showing of prior possession.

8. In holding the principle that the law goes with the land when it is transferred from one sovereignty to another has no application to the transfer by the movement by the river of a few acres of land from one soverignty to another.

9. In holding that the Mexican Law and its application to this case was a question of fact and rightly disposed of as such by the District Judge.

10. In holding that land located in the United States may be recovered by diplomatic proceedings.

11. In holding that the defendant connected himself with the title of the State of Chihuahua to the land in question by an inchoate grant.

SUMMARY OF ARGUMENT

The land here involved was originally in Mexico. The plaintiffs had valid legal title to it from the sovereignty of the soil under the laws of Mexico at the time of the adoption in 1917 of the Mexican Constitution providing for agrarian laws and expropriation proceedings thereunder as found by the District Court. Some time in the year 1926, the land in controversy was cut from Mexico to the United States by an avulsive change in the course of the Rio Grande, the stream then constituting the International Boundary Line as found by the International Boundary Commission. The attempted transfer by the Governor of the State of Chihuahua of the land in controversy to the defendant was null and void and of no effect because the expropriation proceeding constituting the sole source of title of the Governor was null and void and of no effect for the reason that the land so sought to be appropriated was never paid for and payment was never tendered, such attempted expropriation without payment being contrary to established custom and International Law, contrary to the provisions of the Mexican Constitution, and contrary to the provisions of the Statute of the State of Chihuahua then in force. The attempted expropriation was null and void for the further reason

that the Mexican Constitution provides that land may be taken from the owner only through court process, and the Governor was no Court. The holdings of the plaintiffs were not subject to expropriation, not being in an excessive acreage under the provisions of the Mexican Law; and their holdings were further not subject to expropriation because under the provisions of the Mexican Law only the excess above the amount authorized to be held may be expropriated, and the holdings of the plaintiffs did not exceed that amount. The attempted transfer by the Governor to the defendant was null and void for the additional reason that at the time of such transfer, the land in controversy was in the United States and all Mexican authorities were without a vestige of right to do anything affecting the land. The District Court was in error in holding that it was bound by the interpretation given to the Mexican Constitution and Mexican Laws by the Mexican Courts, and in interpreting the law to justify expropriation without payment for the land taken; and the Circuit Court of Appeals erred in holding that under the circumstances of this case it was bound by the act of a foreign government with reference to land then located within its limits, and by holding that it, the Circuit Court of Appeals, was bound by the finding of the District Court as to the meaning of a foreign law, and by holding that in this case the foreign law justified the taking of plaintiff's land without compensation.

ARGUMENT.

Our main reliance for a reversal of this case is quite simple. Mexico took our land and never paid us; therefore, we never lost title and Mexico had no title to convey to the defendant. The process by which we lost our land was plain governmental theft.

Plaintiffs contend they have valid title to El Guayuco Banco, the land in controversy, because it was cut into the United States from their Mexican land holdings known as La Santisima by an avulsive change in the course of the Rio Grande, some time in the year 1926 (R. 437), and because in 1897 they acquired title to La Santisima, which title ran back to the sovereignty of the soil, beginning with a concession by the Legislature of the State of Chihuahua in 1859, and a confirmation by the President of the Republic of Mexico in 1864. (R.434.)

The trial court held that plaintiffs had valid record title to the land in controversy on May 1, 1917, the date of the adoption of the Mexican Constitution, providing for Agrarian Laws and expropriation proceedings (R. 434); that said land was cut from the south, or right bank of the Rio Gande, to the north, or left bank of the Rio Grande, by an avulsive change in the course of the Rio Grande in the year 1926, and that it is now in the United States. (R. 437.)

The title of the defendant rests on an expropriation proceeding whereby the Governor of the State of Chihuahua deprived the plaintiffs of the posssion of La Santisima (R. 253) and an instrument whereby the Governor attempted to convey to defendant title to a portion thereof, known as El Guayuco Banco (R. 276). Defendant has not appealed from the finding that plaintiff had valid record title to the property in controversy prior to the institution

of the expropriation proceeding. It inevitably follows that if there was a fatal defect in the expropriation proceeding, plaintiffs never lost title to the land in dispute, and that they still have it and if there was a fatal defect in either the expropriation proceeding or the instrument of conveyance, defendant never got title and does not now have it. It is the contention of the plaintiffs that both were fatally defective.

First, plaintiffs never lost title because they were never paid for their land.

Trial court made the following finding:

> "The Constitution of 1917 and the Agrarian Law of the State of Chihuahua do not require that compensation be paid prior to, or at the time of the expropriation or taking of land by the State, or that payment for same be then provided for." (R. 436.)

Taken literally, it is reversible error. Besides, the effect of it is to hold the land need never be paid for. If payment of the land is not required to be made or guaranteed at the time of expropriation, then why may payment not be indefinitely deferred and never be made? That seems to be the holding of the court, since the uncontradicted evidence shows that at the time of the trial, almost ten years after the expropriation, no payment had ever been made or tendered. (R.382-387.)

The taking of the land of the plaintiffs without paying for it is contrary to the principles of International Law and established custom.

International Law is a part of the law of the land. *Moore: International Law Digest,* Volume 1, page 10; *The Nereide,* 9 Cranch 388. The rights of aliens in Mex-

ico to real property is a subject of international law. By that law, a citizen of the United States cannot be deprived of property without due process of law, which requires the payment of just compensation. The attribute of sovereignty by virtue of which a nation takes private property for public use is known as "eminent domain". Vattel, in his *"Law of Nations"*, Chitty's Edition, Book I, Chapter 20, page 112 states:

> "If the sovereign disposes of the public property by virtue of his eminent domain, the alienation is valid as having been made with sufficient power. When, in case of necessity, he disposes in like manner of the possessions of the community or an individual, the alienation will, for the same reason, be valid. But justice requires that this community or this individual, be indemnified at the public charge; and if the treasury is not able to bear the expense, all the citizens are obliged to contribute to it; for the burdens of a state are to be supported equally, or in a just proportion."

In *Meade vs. United States* (2 United States Court of Claims Reports, pages 224, 275) it was held:

> "The right of the government to take for public use or public welfare the property of a citizen by virtue of the right of eminent domain, and the obligation to make compensation to the citizen for it, are universally admitted as concurrent and correlative powers and duties. They are co-existent and co-extensive."

The text writers on the subject lay down the same doctrine. *Mills on Eminient Domain,* Section 130 says:

> "Payment must be made before entry, where the owner insists on this right. An entry without payment is a trespass."

Lewis on Eminent Domain, Third Edition, Section 681, says:

> "Any interference with the rights of property is a taking. The occupation of property is clearly such an interference, and should not be permitted until the compensation is paid."

The general and established practice is obviously the same.

> "It has long since become the well settled rule that property cannot be taken for public use without adequate compensation, even on the theory that it has been abandoned by the owner."

10 R. C. L., p. 124.
Pumpelly vs. Canal Co., 13 Wall. 166, 20 L. Ed. 557.
Garrison vs. New York, 21 Wall. 196, 22 L. Ed. 612.
United States vs. Great Falls, 112 U. S. 645, 5 Supreme Court 306, 28 L. Ed. 846.
Great Falls vs. Garland, 124 U. S. 581, 8 S. Ct. 631, 31 L. Ed. 527.
Searl vs. School District, 133 U. S. 553, 10 S. Ct. 374, 33 L. Ed. 740.
Monongahela Navigation Co. vs. United States, 148 U. S. 312, 13 S. Ct. 622, 37 L. Ed. 463.
Bauman vs. Ross, 167 U. S. 548, 17 S. Ct. 966, 42 L. Ed. 270.
Kennedy vs. Indianapolis, 103 U. S. 599, 26 L. Ed. 550.

"Any statute is unconstitutional which enables the donee of the power of eminent domain to take property without first paying compensation therefor in money."

16 Tex, Jur., p. 573.
Mud Creek Irr. etc. Co. vs. Vivian, 74 Tex. 170, 173, 11 S. W. 1078.
Shipley vs. Dallas County Levee Improvement Dist. No. 6, 223 S. W. 556, 561.
Barrett vs. Metcalfe, 33 S. W. 758.

It will thus be seen that International Law and Established Usage are in accord and forbid the taking of private property for public use without compensation.

The Expropriation of El Guayuco Banco was in violation of the Treaty between the United States and Mexico.

The Government of Mexico, in entering into the Treaty of September 8, 1923, with the United States, recognized the rights of American citizens to receive just compensation for property expropriated before they could be divested of their legal titles.

By Article IX, second paragraph, of the Convention creating the General Claims Commission, it was provided:

> "In any case the Commission may decide that international law, justice and equity require that a property or right be restored to the claimant in addition to the amount awarded in any such case for all loss or damage sustained prior to the restitution. In any case where the Commission so decides the restitution of the property or right shall be made by the Government affected after such decision has been made, as hereinbelow provided. The Commission, however, shall at the same time determine the value of the property or right decreed to be restored and the Government affected may elect to pay the amount so fixed after the decision is made rather than to restore the property or right to the claimant. In the event the Government affected should elect to pay the amount fixed as the value of the property or right decreed to be restored, it is agreed that notice thereof will be filed with the Commission within thirty days after the decision and that the amount fixed as the value of the property or right shall be

> paid immediately. Upon failure so to pay the amount the property or right shall be restored immediately."

This recognized, therefore, the right of the claimant, the plaintiff in the present case, to have his land back, unless Mexico elected to pay for it, in which case payment had to be immediate.

In *San Lorenzo Title and Improvement Company vs. Caples,* 48 S. W. (2d) 331, a case involving a banco, the Texas Court of Civil Appeals said:

> "Treaties are the supreme law of the land, and the courts must take judicial knowledge thereof and of the historical data leading up to them, as well as the construction of them by both the executive and judicial branches of the government."

The proceedings leading up to the conclusion of the above treaty, referred to as "Bucareli Conference", are contained in an official publication of the Department of State, entitled "Proceedings of the United States-Mexican Commission Convened in Mexico City, May 14, 1923." (Washington Government Printing Office, 1925). At the formal meeting of June 1, 1923, Commissioner Warren is reported as making the following statements:

> "Then Mr. Warren turned to page 53 of Mexican Document No. 1 and quoted from a communication dated March 31, 1923, which Mr. Pani, Secretary of Foreign Affairs, sent to the charge d'affairs of the embassy of the United States in Mexico, reading as follows:
>
> " 'This Administration succeeded in quelling such centers of rebellion and in re-establishing peace throughout the national territory, not so much by military force and bloodshed as by the quick application of agrarian laws. Nobody doubts that, facing such dilemma, the adopted solution was the most

humanitarian and economic one—in spite of the inevitable damage to individual national and foreign agricultural interests—because the repression by force, of uncertain and transitory results, would have affected necessarily the agricultural, urban, industrial and moral interests throughout the country, with its eternal trail of evils of every kind. This undoubted fact sufficiently justifies the hasty action of the Federal Executive to restitute or grant community lands *(ejidos)* to the villages, taking the necessary lands from the neighboring farm *(haciendas)*, even postponing the indemnity for expropriations and encumbering, consequently a part of the national and foreign agricultural interests of the Republic; but in proportion to their respective size, that is to say, the Mexican properties infinitely more than the Spanish, the latter four or five times more than the American, etc. Naturally, due to the haste with which the Government has had to act in order to be sure to obtain the immediate pacification of the country and to avoid the greater and really irreparable damages caused by civil war, it could not efficiently organize the necessary personnel. It must be remembered, in this connection, that the imperfect administrative organization is an evil found now among the most civilized countries of the world and that this evil had to increase in Mexico, as a result of the last year's revolutionary anarchy. And in the face of the popular eagerness for lands, which was repressed, for a long time, the noble enthusiasm of some *agraristas*, and the intrigues of political agitators who found a favorable field to act, it was not possible, on many occasions, for the Government to keep within the strictest legality.'

"Mr. Warren then took up some specific cases of excesses in respect to American property, after which he added that it was perhaps unnecessary to call attention to other specific cases where excesses had been committed under color of law, but that there was in the files of the Department of State of

the United States and in numerous communications received by the American Commissioners ample evidence of the taking of property, both buildings and the land, contrary even to the provisions of the laws and the decrees of Mexico without any reference to the acquired rights of American citizens and their rights under international law.

"He then stated that the United States maintains that under the rules of international law there can be no taking of lands, water rights or other property of American citizens, in whatever form their interest may be held, legally acquired prior to May 1, 1917, under the laws of Mexico and the Constitution of 1857, without indemnification in cash at the time of the taking for the just value thereof. (Italics ours.)

"He stated that the Government of the United States understood that the division of estates or lands by the Federal Government or by any state government and the payment for any part thereof in bonds, whether federal or state, was in no way connected with the taking of lands for *ejidos* for towns and villages. And he added that the United States could not admit the assertion of the Government of Mexico to the right to declare null and void valid titles to properties or property rights acquired by American citizens or to make grants thereof based on the existence of ancient grants or concessions or communal possession.

"It was further stated by Mr. Warren that Mr. Pani, in the note just referred to, states that the Mexican Government is now in a position to proceed to the legal indemnity for the expropriations that have taken place. He then said that the United States cannot recognize any right of Mexico under the terms of any law, as a legal right, to pay in bonds or to compel American citizens to accept bonds as compensation for land, in whatever form their in-

> terest may be held, which has been or may be expropriated for *ejidos* for towns or villages. He added that the indemnity which the Government of the United States believes Mexico should pay for these lands is their just value in cash at the time of the taking; and that bonds, not immediately convertible into money on the basis of their par value and acceptable to the owner of the land, can in no way be considered as indemnification under the Constitution of 1857 or under the rules of international law. By paying in bonds, he added, not only is Article 27 of the Constitution of Mexico of 1857 violated, but the principles established by international law are also violated."

The lands of the present plaintiff, having been acquired in 1897 when the Mexican Constitution of 1857 was still in effect, come within the language used by Mr. Warren in the passages quoted above.

Article 27 of the Mexican Constitution of 1857 provided (R. 397):

> "Private property shall not be taken without the consent of the owner, except for reasons of public utility, indemnification having been made. The law shall determine the authority to make the expropriation and the conditions on which it shall be carried out."

It is clear from the foregoing, that indemnification must accompany or precede the expropriation. The present plaintiffs, therefore, had acquired a vested right or title of which they could not be deprived under the retroactive application of any subsequent laws purporting to divest owners of their title to the property.

The failure to pay plaintiffs for their land taken was in violation of the provisions of the Mexican Constitution.

It seems to us that plaintiffs' rights should be determined by the provisions of the Mexican Constitution of 1857, since it was in effect at the time plaintiffs acquired title to the property in dispute in 1897. Article 27 of that Constitution provides that private property shall not be taken without the consent of the owner, "*indemnification having been made*". (R. 397.) There can hardly be a shadow of a doubt that such language means previous payment, and that the owner does not lose his title until he gets his money. But if the court should hold that we are to be governed by the provisions of the Constitution of 1917, the result would be the same. There is no substantial difference in the two constitutions in this respect. The Constitution of 1917, Article 27, says (R. 401):

> "Private property shall not be expropriated except for reasons of public utility and *by means of indemnification.*"

The delicate distinctions in time of payment for appropriated land discussed by defendant at the trial seem idle, when it is considered that almost ten years have gone by since the expropriation in this case, and no payment has been made or tendered. (R. 382.)

Defendant calls attention to the fact that the Constitution of 1857 required *previous* indemnity and the Constitution of 1917 said, "*by means of indemnity*", and he says the change is significant.

We think it was probably inadvertent. There is no substantial difference. Measured in terms of time, there would not be an appreciable difference. "By means of *in-*

demnity" certainly means that titles cannot be passed until there has been indemnity. How much sooner would *previous* indemnity be paid? If the framers of the Constitution of 1917 had intended to change the policy, it would have been a simple matter to have left no doubt about it, and to have said that expropriation should be by means of credits extended or guarantees given, instead of by means of indemnity. Indemnity, whether preceded by the word "previous", or the words "by means of", of necessity mean practically simultaneous payment, otherwise it isn't indemnity.

That both constitutions require indemnification before title passes, seems too clear to need the aid of construction. And American courts will do their own interpreting of a foreign law, not being bound by that of any foreign court. *Bank of China, etc., vs. Morse,* 168 N. Y. 458, 56 L. R. A. 139 (New York Court of Appeals). Nevertheless, our view is fortified by the fact that the Supreme Court of Mexico has held that the provisions of the Mexican Constitution relating to the taking of private property for public use means precisely what we contend they mean. Attached hereto as an appendix, is a copy of an opinion of the Supreme Court of Mexico on an appeal from the District Court of the State of Durango, in a case wherein Pastor Moncada, widow of Blanco Teodora, was plaintiff, and the Legislature and Governor of the State of Durango were defendants. That decision conclusively established that regardless of the general value of Agrarian Law, and regardless of the general rule as to whether indemnification for expropriation of land must be previous, simultaneous, or subsequent, or may be never, as contended by defendant, the Law of Mexico is that expropriation and indemnification must be simultaneous.

The opinion in the *Durango case* says this:

> "The second point of the complaint is made to consist of the fact an expropriation is tried to be made against the plaintiff, without payment of the indemnity referred to by Article 27 of the Federal Constitution."

That is our case exactly. Surely the mere recital in the expropriation decree involved in our case, that bonds shall issue, cannot take the place of actual payment. The opinion then proceeds:

> "It is true that this article provides that the expropriation can only be made by reason of public utility, and through indemnity. In what respects to this last requirement, it should be said that, even although Article 27 does not require previous indemnity, it does not provide that it can be postponed; hence logically and juridically speaking, it must be inferred that the expropriation and indemnization should be simultaneous;"

In view of this language, it is difficult for us to see how it can be contended that the opinion was based on a lack of showing of public utility, and does not decide the question of indemnity as argued by the defendant at the trial. The opinion then says:

> "and even in the wrong supposition that the latter could be postponed, it is evident that it had to be guaranteed in a precise, real and positive manner, since without these requirements, such expropriation would amount to despoliation, and our Magna Charta does not authorize such an outrage."

If the failure to guarantee constituted an outrage, then how much greater the outrage when there has been an absolute failure to pay over a period of ten years.

The proceeding in our case was in no sense a true ex-

propriation; it was an unlawful appropriation, a species of despoliation as defined by the Supreme Court of Mexico in the *Durango case.*

Moreover, since the courts below were entirely independent in interpreting a foreign constitution, they should have found this Court more pursuasive than any other authority.

The provision of the Indiana Constitution construed by the Supreme Court of the United States in *Kennedy vs. Indianapolis, supra,* is substantially the same as the provision of the Mexican Constitution here involved. It provided that no man's property should be taken or applied to public use, "without the consent of his representatives, or without a just compensation being made therefor".

It will be observed the organic law did not specifically state whether indemnification should be previous, simultaneous, or subsequent. This court said:

> "It seems to us that both on principle and authority the rule is, under such a constitution as that of Indiana, that the right to enter on and use the property is complete, as soon as the property is actually appropriated under the authority of law for a public use, but that the title does not pass from the owner without his consent, until just compensation has been made to him."

A Statute of the State of Chihuahua forbids expropriation without compensation.

Article 736 of the Civil Code of the State of Chihuahua, in force at the time of the attempted expropriation of our lands by the Governor, reads as follows (R. 91):

> "The property of any person cannot be occupied without the consent of the owner unless by cause of public utility and previous indemnification."

This point is probably unimportant except that a certain situation would arise which seems to us practically impossible, namely that this Court should hold expropriation without indemnification in harmony with the Mexican Constitution. In that event the taking of our land would still be in violation of the State Statute and surely, it cannot be contended that the Mexican Constitution forbids such a statute. If this Court should hold that the taking of our land without paying for it is in violation of the Mexican Constitution, the fact that it is also a violation of a Mexican State Statute simply emphasizes the rape of the plaintiffs.

Giving the most liberal interpretation to any authority that may be cited by defendant, it is confidently believed that no case can be found in the books which goes further than to hold that in the absence of payment of cash at the time of expropriation, there must be at least a guarantee of payment and if actual payment be not made within a reasonable time, title reverts to the owner. In this case there was no guarantee, and surely plaintiffs could not be expected to wait longer than ten years to get their title back, if they ever lost it.

The expropriation proceeding and the Agrarian Law purporting to authorize it were null and void and of no effect.

In the first place the Governor was without authority to conduct an expropriation.

The applicable provisions of the Mexican Constitution of 1857 and 1917 are as follows, respectively:

"No retroactive law shall be enacted. No person shall be tried or sentenced except under laws previously enacted, exactly applicable to the case, and by a tribunal previously established by law." (R. 397.)

"No person shall be deprived of life, liberty, property, possessions or rights without due process of law instituted before a duly created court, in which the essential elements of procedure are observed and in accordance with previously existing laws." (R. 399.)

The provision in the constitution of 1917 against deprivation of property, except by a court, is new. The Governor of Chihuahua is no kind of a court; therefore, he exceeded his authority.

The Agrarian Law (R. 329) claimed by defendant to be authority for the expropriation by which he gained title, was null and void and of no effect. As heretofore pointed out, the Mexican Constitution requires that owners of private land taken for public purposes shall be indemnified. The Agrarian Law makes no provision for indemnification, which by any stretch of the imagination could possibly be distorted into the idea that it was adequate, and if not adequate, it cannot be indemnification.

The holdings of the plaintiff were not subject to expropriation under the Agrarian Law. It specifies the maximum amount of land of a certain type that may be held. The property of the plaintiffs did not exceed that amount. Mr. Gilberto Valenzuela, our expert on Mexican Law, explained this point quite clearly. (R. 91, 92.)

But in any event, the entire holdings of the plaintiffs were not subject to expropriation, only the excess above the amount allowed by law to be held. That only the excess is to be taken is iterated and reiterated in the Agrar-

ian Law. It appears on pages 329, 330, 335 and 337 of the printed record, and twice each on pages 331, 332, 333 and 334. In spite of the law, the Governor dispossessed the plaintiffs of their entire holdings. (R. 267.)

The expropriation proceeding under which defendant claims title, and by which, unless valid, plaintiffs do not lose title, culminates in a decree of the Governor of Chihuahua dated March 5, 1925. (R. 253.) That decree contains many recitals called findings, followed by several conclusions, and ends with four provisos that might be called mandates. The third of these mandates is as follows:

> "Indemnify the owners in the terms of subsection (d) of Section 7 of Article 27 of the Federal Constitution; and, once the Agrarian debt of the State has been created according to subsection (e) of the same section, deliver to them the corresponding bonds, for the purpose of guaranteeing the payment of the value of the expropriated latifundium." (R. 268.)

The entire expropriation proceeding by which plaintiffs were deprived of their land was invalid because the land was never paid for and the expropriation decree was invalid because the purported provision for payment is absurd. The foregoing quoted pretence at compensation is in itself a bald contradiction. It says to indemnify the owner in the terms of Article 27 of the Constitution, and to deliver to them the corresponding bonds upon creation of the Agrarian debt. It would be a physical impossibility to do both of these things at the same time. As we have seen, Article 27 of the Federal Constitution requires prompt payment, and the bonds are not to be delivered until the creation of the Agrarian debt, which may never be done. Moreover, bonds would not constitute indemnization under the provisions of International Law and the treaty, as has been heretofore pointed out.

As stated by the Circuit Court of Appeals for the Fifth Circuit in *Willis vs. First Real Estate and Investment Company,* 68 Fed. (2nd), 671:

> "The proceeding under which he (the defendant in this case) claims was a special one. No jurisdictional presumptions may be entertained in regard to it. The proof must show the jurisdiction. This is required of judgments and other official acts entered in special proceedings, even in domestic ones."

The expropriation decree of the Governor of Chihuahua was not a judgment of a court, but an ex parte administrative act. It was not a general law, but a special decree purporting to affect individual property. It was, therefore, a special proceeding, and must show compliance with the Constitution and the Special Laws governing such proceedings.

In view of the fact that the subject matter of this litigation was at one time in Mexico, and is now in the United States, and that while in Mexico, it was taken from the plaintiffs by what is claimed to have been a lawful proceeding, the test of the legality of that proceeding should be much like the test of the legality of a foreign judgment. On that point, Chief Justice Nelson Phillips of the Supreme Court of Texas in *Banco Minero vs. Ross,* 172 S. W. 711, 714, says this:

> "There is no difficulty, we think, in determining the general principles of law which govern the standing of a judgment of a foreign country in our courts. Where there is a competent court, jurisdiction of the parties and the cause, an opportunity for a full and fair trial, regular proceedings according to the course of a system of civilized jurisprudence, likely to secure an impartial administration of justice between the citizens of its own country and those of

> other countries, with nothing to show either prejudice in the court or in the system of laws, or fraud in the procurement of the judgment, and there is no special reason why the comity of the United States should not allow it effect, the merits of the case, in an action in this country, are not subject to retrial on account of errors of law or fact in the rendition of the judgment."

Since plaintiffs' land was taken without pay, it can hardly be said that it was done through "*regular proceedings according to the course of a system of civilized jurisprudence*".

The Mexican Government had no jurisdiction over the land at the time defendant alleges he acquired title.

The Boundary Commission's finding (Minute No. 121) of March 3, 1930, that Guayuco constituted a banco under the Treaty of 1905 (R. 9) has the effect of determining the sovereignty and jurisdiction either as of the date of the Treaty (1905) or as of the date on which the banco was cut (1926). In either case Mexico's sovereignty over the land had terminated before the expropriation proceedings attempting to divest plaintiffs of their title and to vest title in the defendant were completed.

> "If it was a true banco, after the signing of the treaty neither sovereignty could do any act affecting it to the prejudice of, or otherwise than in accordance with, the result which the application of the Treaty principles required. Any action taken thereafter by either government in the attempted assertion of jurisdiction over it other than by way of policing it, particularly by way of attempts to grant titles or disturb those already granted, could have no effect on it." *Willis vs. First Real Estate and Investment Company* (68 F. (2d) 671).

It is agreed that the banco was cut from Mexico some time in the year 1926, and that as soon as it was created sovereignty over it passed to the United States, so that the deed was executed four years after the banco had left Mexico and at a time when the Governor of the State of Chihuahua was without a vestige of authority to do any act affecting it. In an effort to cure this otherwise fatal defect, defendant claims that his rights under the deed began with the filing of his petition March 14, 1925, when the banco was in Mexico.

Both of his experts in Mexican Law make lengthy, complicated and tenuous arguments in support of the same and they contend that Article 46 of the Agrarian Law supports their theory. It is as follows (R. 344):

> "An application having been presented for a determined lot, no other shall be accepted applying for the same lot, until there shall have been pronounced a definite decision with reference to the first application. In case of there being presented several applications at the same time, the order of preference established by Article 51 shall be observed."

It is obviously inadequate for the purpose claimed. It simply gives to the person who files a petition to be awarded land, the right to have his petition considered before any petitions filed afterwards for the same land.

Defendant further contends that under the law of Texas, his deed would be effective as of the date of his application. His authority for the position taken is Article 5312, et seq., 15 Tex. Civ. St., 1925. It is true, as stated by defendant, that an application in Texas for a portion of the public domain, if accepted, becomes a conveyance, but that is wholly by reason of the specific provisions of the Texas statue. It provides that an application shall be in

the nature of a bid, and shall be accompanied by a certain proportion of the amount bid; that the land shall be awarded to the highest bidder, and the offer and acceptance together shall constitute a conveyance. The defendant then argues that in the absence of proof to the contrary, it will be presumed the law of Mexico is the same. But the trouble with the argument is that the defendant, himself points out the applicable Mexican law, which shows on its face that it does not remotely resemble the Texas statute. It merely provides that when application is filed, no other shall be considered until the first shall have been disposed of. The application conveys nothing and creates no rights; it is not in the nature of a bid, and never becomes a conveyance.

Furthermore, there is not the slightest intimation in any of the defendant's purported muniments of title or anywhere else in the record, that the parties to such instruments, intended that the deed to the defendant should have retroactivity or that his application should initiate in him any vested right. The application dated March 14, 1925 (R. 269) merely prays that defendant be considered an applicant for land, describing it so roughly that it is not susceptible of location. The so-called Executive Power, dated April 15, 1925 (R. 273) is merely a letter from a clerk advising that the Governor had received the application and that the rights thereunder would be determined upon the division of the latifundium. The deed dated February 20, 1930 (R. 277) which is much like an American deed, after some preliminary recitals, none of which insinuates retroactivity, says that the Temporary Constitutional Governor of the State of Chihuahua, in the name of the Government of said State, "*hereby adjudicates and sells to Pascual Carlos Mier*", the land therein described for a consideration in the sum of Two hundred and twenty-six pesos, six cents.

Another Executive Power, dated February 17, 1930, (R. 291) merely purports to place the defendant in possession of the land so attempted to be sold to him three days later. Defendant offers nothing else to show title in him, except a Correction Deed dated May 20, 1930 (R. 299). That instrument purports to do nothing except correct the description in the previous deed.

However, in connection with the last instrument, we wish to make this observation. It recites that the land thereby conveyed composed of the "Guayuco" and "Calero" bancos, on a recent date passed into the jurisdiction of the United States of America, by resolution of the International Boundary Commission, in accordance with the international treaty of 1905 between that country and the Republic of Mexico. So that in the event of a difference of opinion as to whether sovereignty over El Guayuco Banco passed in 1926 when it was created, or upon the promulgation of the resolution of the International Boundary Commission, March 3, 1930, the final step in its attempted sale to the defendant, the Correction Deed, was subsequent to either.

The correction deed, like the original deed, purported to be the act of the Government of the State of Chihuahua and it was executed when the banco was in the United States, and Mexico was without jurisdiction.

The Circuit Court of Appeals committed reversible error in holding that it could not inquire into the validity of the Mexican expropriation proceeding whereby the plaintiffs lost the land in controversy.

The Circuit Court of Appeals said that the Courts must treat as valid governmental action within its domain by a foreign state, and in support of that conclusion cited *Oetjen vs. Central Leather Co.*, 246 U. S. 297, and *Ricaud vs. American Metal Co.*, 246 U. S. 303. The holding in those cases is the law only in similar situations. In both cases the act, the validity of which the American Court declined to examine, was the act of the commander of a revolutionary force, while actually engaged in warfare, in making a seizure for the purpose of defraying the expense of further hostitities, the revolutionaries being afterward recognized as the government *de jure*, and the seizure made was authorized by the Articles of War, and it was not contended that there was any authority for it under the civil law. It is not believed this Court intended the doctrine there pronounced to be extended beyond the facts there found. The fact situation here is quite different from the one there involved. Here the seizure was made by a civil officer in time of peace, when the government was stable and under the guise of the authority of law and for the ostensible purpose of carrying out the provisions of the Mexican Constitution.

The Courts of the United States, both State and Federal, have many times examined the acts of foreign nations, and have frequently held them invalid in protecting the rights of American citizens abroad. For example, see the following cases:

United States vs. Arredondo, 6 Peters 691, 748;

United States vs. Percheman, 7 Pet. 117;
Delassus vs. United States, 9 Pet. 117;
United States vs. Reynes, 9 Howard 127, 148;
Davis vs. Police Jury, 9 Howard 280, 289;
United States vs. Sutter, 21 Howard 170;
United States vs. Rose, 23 Howard 262;
Donaldson vs. Dodd, 12 Tex. 381, 394;
State vs. Bustamante, 47 Tex. 320, 322;
Kenedy Pasture Co. vs. State of Texas, 111 Tex. 200, 230.

Even the validity of a foreign judgment will be examined by a local Court:

Hilton vs. Guyot, 159 U. S. 113, 40 Law Ed. 95;
Banco Minero vs. Ross, 172 S. W. 711;
San Lorenzo Title & Improvement Co. vs. City Mortgage Co., 48 S. W. (2nd) 310;
San Lorenzo Title & Improvement Co. vs. Clardy, 48 S. W. (2nd) 315;
San Lorenzo Title & Improvement Co. vs. Caples, 48 S. W. (2nd) 329;
Willis vs. First Real Estate & Investment Co., 68 F (2nd) 671.

The Court should bear in mind at all times that in this proceeding, plaintiffs are not seeking damages for the unlawful taking of their land. If that were so, possibly they would be relegated to the Courts of Mexico, or to an international claims commission. Certainly that would be their remedy if they were seeking damages for the unlawful taking of that part of La Santisima still remaining in Mexico. But that is not the situation. Here we are after the land itself, not damages; land that unquestionably is now lying in the jurisdiction of this Court.

It seems preposterous that defendant can set up as his sole source of title the expropriation decree, and in

the same breath say this Court cannot inquire into its validity because it is the work of a foreign nation. Defendant should be estopped to take that position; since he offers the expropriation decree, good faith requires that it should be subject to the scrutiny of the Court. If this proceeding were pending in Mexico, the expropriation decree would not be immune from attack.

The Circuit Court of Appeals committed reversible error in holding that it was bound by the Trial Court's interpretation of Mexican Law.

The Circuit Court of Appeals said:

> "We are of the opinion that the Mexican law and its application to this case was a question of fact and rightly disposed of as such by the District Judge, if he had any right to go into the question at all. We are bound by his findings."

It is well settled that foreign law must be proved as a fact, but it is consistent with the weight of authority that the interpretation of foreign law and its application to the facts of the case on trial are for the Judge and are matters of law, subject to review on appeal.

The New York Court of Appeals in *Bank of China, et al. vs. Morse,* 168 N. Y. 458, 56 L.R.A. 139, said:

> "That, when it becomes necessary to establish the law of a foreign country, it must be proved, as facts are proved, there is no doubt; but when, after such proof is given, the questions involved depend upon the construction and effect of a statute or judicial opinion, we think those questions are for the court, and not questions of fact at all."

The Court cited the following authorities:

Chase's Stephen, Ev. 146;
Hanley vs. Donoghue, 116 U. S. 1, 29 L. Ed. 535, 6 Sup. Ct. Rep. 242;
Ufford vs. Spaulding, 156 Mass. 65; 30 N. E. 360;
Molson's Bank vs. Boardman, 47 Hun. 135; Story Confl. L. Sec. 638; 1 Greenl. Ev. Sec. 486;
Kline vs. Baker, 99 Mass. 253, 255;
Shoe & Leather Nat. Bank vs. Wood, 142 Mass. 563, 568, 8 N. E. 753.

Other authorities to the same effect are:

Inge vs. Murphy, 10 Ala. 885;
The State vs. Jackson, 13 N. C. 563;
Consequa vs. Millings, 6 Fed. Cases 336, 337 (Pet. C. C. 225, case No. 3128);
Williams vs. State, 11 S. W. 481;
Sidwell vs. Evans, 1 Pen. & W. 383, 21 Am. Dec. 387;
Alexander vs. Pennsylvania Co., 48 Ohio St. 623, 30 N. E. 69;
Wheeler vs. St. Paul Crushed Stone Co., 191 Ind. 75, 132 N. E. 1;
Rood vs. Horton, 231 P. 450, 132 Wash. 82;
Fourth Nat. Bank of Montgomery, Ala., vs. Bragg, 102 S. E. 649, 127 Va. 47, 11 A. L. R. 1034;
Tarbell vs. Grand Trunk Ry. Co., 118 A. 484, 46 Vt. 170, 34 A. L. R. 1444;
Saloshin vs. Houle (New Hampshire), 155 A. 47;
Sealy vs. Missouri, K. & T. Ry. Co., 114 P. 1077, 84 Kan. 879, 41 L. R. A. (N. S.) 500;
Osgood Co. vs. Wilkinson, 191 N. E. 779, 265 N. Y. 70.

The only Federal case we have been able to find which seems to be to the contrary is *Compania Transcontinental de Petroleo, S. A. vs. Mexican Gulf Oil Co.* (C. C. A. 2nd) 292 Fed. 846, and in our opinion the doctrine there laid down is not supported by the authorities cited.

In an earlier part of the opinion of the Circuit Court of Appeals in this case, it said in speaking of the law of Mexico:

> "It remains for the law to be proved as a fact when written by production of copies of the constitution and statutes, and in other respects by the testimony of experts. The writings are to be construed by the Judge as other writings in evidence, but if uncertain in meaning or application, evidence of experts is again admissible to aid construction."

That statement of the law is not very clear, but it is more nearly correct than the statement previously quoted and which was followed by the Court. We believe that the cases cited by the Circuit Court of Appeals in connection with the foregoing quotation support our contention that the interpretation given by the Trial Court to foreign constitutions and statutes is matter of law subject to review on appeal. The cases are as follows:

The Amelia, 1 Cranch 1;
Pierce vs. Indseth, 106 U. S. 551;
Liverpool Steam Co. vs. Phoenix Ins. Co., 129 U. S. 445;
Slater vs. Mexican National R. R. Co., 194 U. S. 121.

In each of the foregoing cases, the Appellate Court gave its own interpretation to the foreign law involved.

And it was fundamental error for the Circuit Court of Appeals to hold the principle that the law goes with the land when it is transferred from one sovereignty to another has no application to the transfer by the movement of the river of a few acres of land from one sovereignty to another.

Spanish laws prevailing in Louisiana before its cession and affecting titles to land there, *must be judicially noticed* by the Court. *Their existence is not matter of fact to be tried by a jury. U. S. vs. Turner*, 11 Howard 663; *U. S. vs. Chavez* (1895) 159 U. S. 452, cited in Moore, Int. Law Digest, I, 333.

Grants made by the Spanish authorities in territory which, upon the subsequent settlement of a disputed boundary line, was determined to belong to one of the United States, are void. *Robinson vs. Minor,* 10 Howard 627, cited in Moore's Int. Law Digest I, 746.

The provision in a treaty that the inhabitants of a ceded territory shall be protected in the free enjoyment of their property, does not extend to mere *inchoate* rights which are of imperfect obligation and affect only the conscience of the new sovereign. *Dent vs. Emmeger,* 14 Wall. 308.

Under the doctrine of the Fremont Case *(Fremont vs. United States,* 17 Howard 442, 15 L. Ed. 241), the laws of Mexico in regard to the tract here in controversy are not regarded as the laws of a foreign nation, but as domestic laws.

Since the land in dispute was in Mexico at the time of the adoption of the Agrarian Law, and while the expropriation was proceeding, this Court would scrutinize them and pass on their validity, not as the acts of a foreign nation, but as domestic acts, because at the time the acts were done by Mexico, the tract in question was not foreign to Mexico, but was a part of it.

The plaintiffs in this case have no remedy but in this Court under the Universal Rule that title to land can be adjudicated only in the forum of the situs.

It is the contention of the plaintiffs that El Guayuco Banco was cut from La Santisima; that A. L. Shapleigh, Charles H. Peck and Thomas Ranken, Jr. acquired valid and legal title to La Santisima by the Deed of February 13, 1897, from Bennett H. Davis, as well as by prescription under the provisions of the Mexican Statute of Limit-

ation, and that there has never been any divestiture of such title. Therefore, El Guayuco Banco is now owned by A. L. Shapleigh and the heirs or legal representatives of Charles H. Peck and Thomas Ranken, Jr.

That the proof abundantly establishes the rights of A. L. Shapleigh admits of no doubt. The rights of the Plaintiffs who sue as heirs and legal representatives of Charles H. Peck are also well established. If the Court should entertain any doubts that the Plaintiffs who sue as the heirs of Thomas Ranken, Jr., have established their rights in that capacity, it would not affect the rights of the other plaintiffs, and would not affect their right to recover the entire tract in controversy, since each individual plaintiff sues as a tenant in common, and seeks the recovery of the entire tract for himself.

The law applicable to the situation is as follows:

Trespass to try title can be maintained by a tenant in common without joining his co-tenants. *Carley vs. Parton,* 75 Tex. 102, 103; 12 S. W. 950.

All tenants in common need not join in trespass to try title. *Leland vs. Eckert,* 81 Tex, 229, 230; 16 S. W. 897.

Trespass to try title by one plaintiff in the name of other owners held proper. *Robertson vs. Lee,* 249 S. W. 217, affirming 230 S. W. 730, where it is said that: Testimony that purchaser at foreclosure sale purchased one-fifth interest for another held available to prove such other person's interest.

The general rule that all persons having an interest in a litigation should be made parties is subject to exceptions, and where the claimants in trespass to try title against an acknowledged co-tenant are numerous, and it appears that possibly some of those who, under plaintiffs' theory of the case, are entitled to recover reside in another

state, they may be disregarded, and plaintiffs may proceed to judgment for their own interest in the land. *Hess vs. Webb*, 123 S. W. 111; 103 Tex. 46.

Judge Gaines, in *Boone vs. Knox*, 80 Tex. 642, 644; 16 S. W. 448, said: "The true principle would seem, however to be that each tenant in common is entitled to the enjoyment of the entire premises undisturbed by any one except his co-tenants, and therefore it is proper that he should have the right to dispossess a stranger to the title."

Syllabus, *Humphreys vs. Green*, 271 S. W. 116: "Where jury in trespass to try title found that plaintiff's ancestor had never conveyed the land in controversy to defendant's grantor, the defendants were therefore trespassers, and heir as tenant in common could recover the entire interest in land against defendants."

"The general rule is that one of several tenants in common may maintain an action to recover the whole of the land from a person having no title." Judge Walker, in *Taylor vs. Higgins Oil & Fuel Co.*, 2 S. W. (2d) 288, 296. Same opinion says: "Again in *Keith, v. Keith*, 39 Tex. Civ. App. 363, 87 S. W. 384, and *Hooper v. Hall*, 30 Tex. 158, the question was decided on the proposition that one co-tenant may maintain an action for posession against a trespasser, and the recovery inures to the benefit of the other co-tenants." The same opinion further says: "In *McDonald v. Hamblen*, 78 T. 628, 14 S. W. 1042, it was held in trespass to try title by a co-tenant against one claiming adversely under a tax deed that it is immaterial that the portion owned by the co-tenant is identified in his conveyance by a particular description."

Higgins, J., in *Plowman vs. Miller*, 27 S. W. (2nd) 612, said at p. 616: "Plowman * * * the plaintiff owns the other interest as a tenant in common, and as such had the right to maintain this action against a stranger to the title and recover upon the principle that one co-tenant can recover his own and the interest of his co-tenant as against strangers to the title. Under such circumstances, the defense of an outstanding title has no application. *Hill v. Smith*, 6 Tex. Civ. App. 312, 25 S. W. 1079; *Mealy*

v. Lipp, 16 Tex. Civ. App. 163, 40 S. W. 824; *Pilcher v. Kirk,* 60 Tex. 162; *Sowers v. Peterson,* 59 Tex. 216; *Boone v. Knox,* 80 Tex. 642, 16 S. W. 448, 26 Am. St. Rep. 767, and other cases cited in 10 Michie's Digest, 1061-2."

What are tenants in common?

"*Tenants in Common*" are such as hold by several and distinct titles, but by unity of possession, because none knoweth his own severalty, and therefore they all occupy promiscuously.

2 Bl. Comm. 191; *Gould v. Subdistrict No. 3,* 8 Minn. 427, 431 (Gil. 382, 384); *Coster v. Lorillard,* (N. Y.) 14 Wend. 336; *Manhattan Real Estate & Building Ass'n. v. Cudlipp,* 80 N. Y. Supp. 993, 996, 80 App. Div. 532; *Taylor v. Millard,* 28 N. Y. St. Rep. 694, 695; *Taylor v. Millard,* 23 N. E. 376, 377, 118 N. Y. 244, 6 L. R. A. 667; *Griswold v. Johnson,* 5 Conn. 363, 365; *Silloway v. Brown,* 94 Mass. (12 Allen) 30, 36; *Gittings v. Worthington,* 6 Atl. 228, 233, 67 Md. 139; *O'Bryan v. Brown* (Tenn.) 48 S. W. 315, 316. There is no necessity for unity of interest. Tenants in common are such as have a unity of possession, but distinct and several titles to their shares. *Filton v. Vail* (N. Y.) 42 Hun. 638, 640. *The quantities of their estate may be different, the shares may be unequal,* the modes of acquisition of title may be unlike, and the only unity between them be that of possession. A remainderman may have a constructive possession sufficient to constitute the unity of the right of possession required to exist in a tenancy in common, and enable him to maintain an action for partition during the life of the life tenant. *Sullivan v. Sullivan,* (N. Y.) 4 Hun. 198, 200. Words and Phrases, Vol. 8, page 6908.

What is trespass?

"Every entry on land of another without lawful authority is a trespass, though it be only trodden, and whether the land be inclosed or not, and no matter whether any damage be done or not. The gist of the action is the wrongful entry. Whatever is done after that is but an

aggravation of damages. If a man's land be not inclosed the law encircles it with an imaginary inclosure, to pass which is to break and enter. The mere act of breaking through this imaginary boundary constitutes a cause of action, as being a violation of the right of property. *Agnew v. Jones,* 23 South. 25, 26, 74 Miss. 347."

See Words and Phrases, Vol. 8, p. 7089, for the foregoing and other definitions. We do not find any applicable Texas definition. Texas cases defining "Trespass" deal with venue and jurisdiction.

It will be noted that while some of the cases cited use the expression "trespasser", Judge Gaines in *Boone vs. Knox, supra,* and Judge Higgins in *Plowman vs. Miller, supra,* use the expression "stranger to the title", so that whether or not the defendant is a trespasser, certainly if the Court decides that Plaintiffs have made out valid title, or that Defendant has failed to make out a valid title, in either event, the Defendant would be a stranger to the title, and each Plaintiff would have the right as a tenant in common to sue for and recover the entire tract.

If either side in this case is to be charged with lack of good faith, it cannot be the Plaintiffs; they acquired the property in the usual way; presumably they paid an adequate consideration, anyhow it was satisfactory to the seller; they had possession twenty-eight years, during which time no question as to the validity of their title was ever raised, and they always paid the taxes and otherwise complied with the Mexican Law. (R. 116.) On the other hand, the Defendant paid two hundred twenty-six pesos, six centavos for El Guayuco and El Calero bancos, with a total acreage of about four hundred thirty-five, or less than twenty cents an acre United States currency. (R. 286.) In other words, assuming that the defendant actually paid the consideration recited in the deed, if he loses this case, he will be out practically nothing, and

if he wins, the land will have cost him just about whatever it costs to defend this suit.

Mr. A. P. Coles testified that at the time of the trial of this case, the land in controversy had a fair market value of Twenty-five Dollars ($25.00) per acre, but that it had previously been worth much more, approximately One Hundred Dollars ($100.00) per acre. (R. 228.) It is a matter of common knowledge that land values were about at their peak at the time of the execution of the deed from the Governor of the State of Chihuahua to the defendant. It seems incredible that the Governor would have been willing to sell for less than $100.00, property worth approximately $40,000, if he had complete confidence in his ability to deliver good title.

The point made by the defendant that plaintiffs have sought remuneration from the International Claims Commission on account of the loss of their lands which still remain in Mexico, has no bearing on any issue involved in this case. We are not here seeking damages for unlawful detention or unlawful expropriation of our land. We are seeking the land itself. The land in question is now within the territorial jurisdiction of this Court, and it is within the jurisdiction of this Court to adjudicate its title. We claim that we now have title because when the land was in Mexico, we had title, and the title has never been ousted by a lawful expropriation proceeding or otherwise.

Every vestige of right that the defendant could possibly have in this proceeding rests wholly on the expropriation. If the expropriation was void, then defendant is a mere naked trespasser. If the defendant is a mere naked trespasser, then plaintiffs must prevail, upon a showing of prior possession.

Alexander vs. Gilliam, 39 Tex. 227;
Caplen vs. Drew, 54 Tex. 493;
Parker vs. Rwy. Co., 71 Tex. 133, 8 S. W. 541;
Boyd vs. Miller, 54 S. W. 411;
Lockett vs. Glenn, 65 S. W. 482;
Teagarden vs. Patten, 107 S. W. 909;
Frazer vs. Sureau, 128 S. W. 649;
Stuart vs. Harper, 143 S. W. 712;
Chicago, R. I & G. Ry. Co. vs. Johnson, 156 S. W. 253;
Allen vs. Vineyard, 212 S. W. 266;
Beason vs. Williams, 229 S. W. 963;
Williams vs. Chew, 19 S. W. (2nd) 68.

There can be no doubt about prior possession on the part of the plaintiffs. The trial court held that plaintiffs had record title to the land in controversy (R. 434). Under the law of Mexico record title constitutes possession. Art. 2983 of the Civil Code of Chihuahua reads thus:

> "If the thing sold is real estate, it is said to be delivered as soon as the title is executed, or if there is no writing, as soon as the titles to the estate are delivered." (R. 419.)

Record title in the plaintiffs endured from 1897 to 1925, a period of twenty-eight years, and all that time the plaintiffs paid the taxes on the land in controversy, surveyed it, and rented it, and exercised dominion over it, and had actual physical possession of the disputed realty, either personally or through their agents. (R. 110 and R. 205.) The Governor of Chihuahua in his expropriation proceeding recognized that plaintiffs had title and possession. (R. 254, 267.)

PLAINTIFFS PROVED VALID LEGAL TITLE TO THE PROPERTY IN CONTROVERSY.

It is the contention of the Plaintiffs that the trial Court found that the Plaintiffs had valid record title to the land in controversy at the time the Governor of the State of Chihuahua attempted to take it away from them through an expropriation proceeding. (R. 434.) That being so, and the Defendant having taken no cross appeal and having filed no cross-assignments of error, it seems to us that our title was free from attack, and therefore, requires no support. The Defendant contends, however, that the trial Court did not make such a finding, and therefore, our title is subject to attack and in his brief, * he attempted at some length to point out the alleged weaknesses in our title. If the District Court did not make such finding as we think it did, then we here contend, as we did in our assignment of errors (R. 441), that his failure to do so was reversible error, and without waiving any rights that might accrue to us by virtue of the finding on the part of the District Court that Plaintiffs had valid legal title to the property in controversy, we ask leave to answer the attack of the Defendant and support the title of the Plaintiffs.

The documents offered in evidence by the Plaintiffs appear to be valid and regular, and to constitute a complete and lawful chain of title to the land in controversy.

The Defendant makes the following objections (R. 18):

1. Defendant objects to Plaintiffs' Exhibits 4 and 5, being the Spanish document dated November 29, 1864, whereby the President of Mexico ratified in Laureano

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* In the Circuit Court of Appeals.

Munoz title of ownership of a tract of land called La Santisima, and the English translation thereof, respectively, on the grounds that:

a. It purports to be a confirmation of a title, but no grant of a title is shown.

b. There is no description in the instrument as would enable a person to locate the land under any circumstances.

c. It does not appear to have been executed with that mutuality which is required by the laws of Mexico, in passing title to land.

d. That the instrument itself refers to a title by virtue of an adjudication by the parties to whom it is addressed, and there is no evidence of such an adjudication or any means by which it could be located or established.

As the Defendant objects to all of Plaintiffs' conveyances on the ground of faulty description, it might be well, at this point, to show what the descriptions consist of. In the President's ratification of the concession for Laureano Munoz dated November 29, 1864, the description is:

> "Thirty-four sitios of Ganado Mayor (old land measure) situated on the right bank of the Bravo River from the old Presidio (fortress) up to the mines of the Presidio of Pilares." (R. 20.)

In the Deed from the heirs of Laureano Munoz to Ignacio Macmanus dated June 1, 1886, it is stated that it undertakes to:

> "Transfer by absolute sale and perpetual alienation, with all their uses, rights of way, water con-

> cessions and permanent rights or privileges, to Mr. Ignacio Macmanus the lands owned by them known under the name of "La Santisima", situated on the right bank of the Bravo River on a zone or belt of two leagues of latitude, from the Old Presidio to the ruins of the Pilares, commencing on the bank of the said river;" (R. 29.)

In the Deed dated December 6, 1886, executed in Mexico City, conveying La Santisima from Ignacio Macmanus to Bennett H. Davis, it is stated:

> "That likewise, the said Ignacio Macmanus is the owner of other lands of two leagues of latitude, with an area of one hundred four thousand four hundred twenty-four hectares, fifty seven ares, ninety-six centiares, on the right bank of the said Bravo river, which belt of land has at one extremity what is known as "Presidio Viejo" and at the other end the ruins of "Presidio de Pilares", which serves as a boundary for the land previously described and to which it joins (San Antonio) which is known as "La Santisima":" (R. 76.)

In the registration in Juarez, May 10, 1887, of the testimonio brought from Mexico City of the Deed from Ignacio Macmanus to Bennett H. Davis, dated December 6, 1886, appear the following descriptions:

> "By that contract Macmanus sold to Davis the Hacienda known as La Santisima located in Bravos District together with two other rural properties, which adjoin it and belong to Ojinaga District, all being on the right bank of the Bravo river." (R. 53.)

> "Which testimonio by agreement in its first clause only explains that the dimensions and boundaries of said La Santisima lands situated on the right bank of the Bravo river are on a belt of two leagues of latitude from the Old Presidio ~~as far~~ as the ruins of Pilares, commencing at the edge of the said river." (R. 56.)

This instrument also states that La Santisima was

> "measured by engineer William T. Glenn and Thomas T. Doyle, and found to contain one hundred four thousand four hundred twenty-four hectares, fifty-seven ares, and ninety-six centiares." (R. 57.)

The Deed from Bennett H. Davis to Shapleigh, Ranken and Peck executed in El Paso, Texas, February 13, 1897, protocolized in Juarez December 1, 1897, recorded in Juarez July 13, 1922, calls it La Santisima Grant, and describes it as "beginning at the upper river corner of said La Santisima grant", and then gives courses and distances around the tract, stating that 32-2/5 100 parts containing ninety-five thousand two hundred and four acres of land conveyed, located on the west bank of the Rio Grande in the Bravos Canton of the State of Chihuahua, Mexico. (R. 119.)

In the confirmatory Deed by which Ignacio Macmanus conveys to Bennett H. Davis, executed in Los Angeles January 2, 1924, protocolized in the City of Chihuahua March 4, 1924, inscribed in the public registry of property in Juarez, June 13, 1924, it is stated that La Santisima has an area of one hundred eighteen thousand eight hundred ninety one hectares, and describes the property by metes and bounds, and gives the names of the owners of the contiguous property. (R. 98.)

Mr. Gilbert Valenzuela, a Mexican lawyer of wide experience in prominent positions with the Government of Mexico, as well as in the actual practice of law in Mexico, testified that the confirmation by the President of the Republic of Mexico in 1864 of the concession to Laureano Munoz by the Legislature of the State of Chihuahua in 1859 was valid and effective as a muniment of title, because, under the theory prevailing in Mexico, all land belonged to the Crown of Spain prior to the separa-

tion, and afterwards to the Mexican nation, so that it was the confirmation by the President and not the concession by the Legislature that was really effective in passing the title. (R. 22.)

Mr. Valenzuela further testified that (R. 24, 43, 108, 245) the description in each of Plaintiffs' conveyances was sufficient, according to the custom and usage in Mexico. That opinion seemed reasonable, especially with reference to the document now under consideration.

In 1864, affairs in Mexico were in a precarious condition. The country was sparsely settled, methods of communication were crude, and the lands were of little value. Under the circumstances, the description given was doubtless the best that could be given, and was all that was needed. It seemed to satisfy the parties. If anyone else was injured, the Courts were open to him. It does not appear that any of the conveyances in Plaintiffs' chain of title were ever attacked for faulty description or for any other reason.

The confirmation by the President in 1864 of the legislative grant puts the tract on the Rio Grande, gives the area, and marks the ends. From that the width could easily be determined, which would render the property locatable upon the ground. Each successive conveyance improved the description, and many years before the Defendant had even an apparent interest in the tract, it was described by metes and bounds. (The Defendant could not have had a shadow of an interest in the property before 1925, we think not before 1930, and it was described by metes and bounds in the Deed from Davis to Shapleigh, et al, in 1897.) Even if there were a fatal defect in the paper title of the Plaintiffs, which we do not admit, but expressly deny, title by prescription was

twice perfected before the Defendant came into the picture—between 1864 and 1886, while the Muñoz family had possession, and between 1897 and 1925, while the present owners had possession. In addition, Bennett H. Davis doubtless perfected title by prescription when he had possession in good faith from 1886 to 1897. Moreover, the Defendant is estopped to question the validity of the title of the Plaintiffs because all Defendant's rights are derived from the Decree of Expropriation, and it admits title in Plaintiffs.

Apparently Defendant has not much faith in the particular objection now under consideration, namely, faulty description, because neither of his experts in Mexican law, who both testified at great length, said a word in support thereof.

In support of his contention that the description in the various instruments are sufficient, Mr. Valenzuela cites Articles 2730 and 2731 of the Civil Code of Chihuahua. (R. 427.) It occurs to us this bolster is unnecessary, since, as heretofore shown, the descriptions given are sufficient to render the tracts locatable on the ground.

As to the alleged lack of mutuality of consent complained of by the Defendant with reference to the particular instrument here under consideration, namely, Plaintiffs' Exhibit No. 4, being the President's confirmation of the original grant, Mr. Valenzuela says (R. 45) there is a distinction between a contract with the Government and a contract with another person, and when the Government grants a title to a person no acceptance is needed. As to the necessity in general for mutuality in contracts under the Mexico law, Mr. Valenzuela says (R. 132) that under the old law there were three essentials to the validity of a contract: capacity of the con-

tracting parties, mutual consent, and legality of object or purpose; and the new law added a fourth: that the contract shall be executed with the external forms required by law. He further says, however, that no formality is required. The essentials must be in the contract itself and not necessarily in the language expressing it, and he says in effect that a contract appearing on its face to be valid, stands until overturned at the instance of an objector, which is the rule in the United States, is certainly a wholesome doctrine, and is probably the law in all civilized nations.

Defendant contends (R. 71) that the deed from Ignacio Macmanus dated December 6, 1886, to Bennett H. Davis, conveyed no title, for two reasons: (1), "that it must be accompanied by a particular description of the land and a map showing the lands sought to be claimed or held under the instrument, and no such map accompanied the instrument, and no map appears on the record thereof;" and, (2), "that the instrument was first tendered for record in 1924, after the adoption of the Constitution of 1917, and after the promulgation of the organic law putting Article 27 of the General Constitution into effect, and after the adoption of the Agrarian Law by the State of Chihuahua." These points will be taken up in order.

It is a rule of law of universal application that a substantial compliance with the terms of a contract is sufficient. No Mexican statute or regulation has been produced which requires a literal compliance with the terms of a contract. Mr. Gilberto Valenzuela, Plaintiffs' expert in Mexican law, says that the deed in question is valid and gives his reason for that opinion at great length. (R. 84.) In 1897, eleven years after the execution of the deed in question, the same land thereby conveyed was again conveyed by the grantee by metes and bounds. Dur-

ing that time the validity of the transfer was not questioned. It seems to us that the grantor would have been estopped to question the validity of the deed of 1886, and the grantee ratified it by holding the land for eleven years under said deed, and then conveying the title thereby acquired. Under the Mexican law, nobody except the parties to the instrument could have questioned its validity. Article 1788 of the Civil Code of the State of Chihuahua extant at the time of the execution of the deed of 1886 herein questioned, reads as follows:

> "The action and the defense of nullity belong to the principal parties and to their sureties, excepting those cases in which the law expressly provides otherwise."

Moreover, there was specific ratification by the parties of the deed here in question. The deed executed in Los Angeles, California, January 2, 1924, by Ignacio Macmanus describes the property therein conveyed by metes and bounds and has attached to it maps of the land conveyed (R. 95), and recites that it is in confirmation of the deed of 1886. (R. 98.) By this instrument Ignacio Macmanus, the grantor in the previous instrument, and Shapleigh, Ranken and Peck, successors in title to Bennett H. Davis, grantee in the previous instrument, ratified and confirmed the deed of 1886. Meanwhile, its validity was never questioned.

The Agrarian Law quoted in Defendant's brief, shows on its face that it has no application whatever to the instrument here in question, nor to any other instrument involved in this case. Article 53 of the Agrarian Law begins thus (R. 345):

> "Every transfer of ownership of land which may be made after the promulgation of this law and by virtue thereof * * *"

It could hardly be made more clear that it was the intention of the framers of the Agrarian Law that it should not be retroactive, and that its application should be confined to instruments executed after the date of the Agrarian Law, and made in pursuance of the provisions thereof. Even if, by some stretch of the imagination, it could be conceived that the transfer of ownership of the property here involved took place in 1924 after the promulgation of the Agrarian Law because of the ratification in that year, certainly the transfer of ownership did not take place "by virtue thereof", and the two must concur in order to make the Agrarian Law applicable. The deed of 1886 from Macmanus to Davis was complete in itself, and perfect under the Mexican law. It merely left something undone (the filing of maps and a more complete description) which the grantee might call on the grantor to do if he saw fit. That the transfer of ownership took place in 1886, thirty-eight years before the passage of the Agrarian Law, is evidenced by the fact that the grantee took possession and after holding possession eleven years, in 1897 he conveyed the same land to Shapleigh, Ranken and Peck, and the grantor acquiesced therein. Since the grantee in the deed of 1886, after holding the land eleven years, made a conveyance of it to others, who thereafter held the land as long as they could, it must be assumed that said grantee, either by himself or an agent, took whatever possession of the land was necessary to make his title valid, if any such was necessary. Article 2717 of the Code of Chihuahua of 1898 is as follows (R. 426):

> "If the thing sold is real estate, it is considered as having been delivered from the moment of the execution of the deed of conveyance, and if this should not be necessary, as soon as the respective private contract is executed."

Defendant further contends that the deed from Bennett H. Davis to Shapleigh, Ranken and Peck, dated February 13, 1897, is invalid for the reason that: (a) It shows lack of mutuality because not executed by the grantees; (b) It does not show the capacity of the grantees; and (c) It was not registered until after the promulgation of the Agrarian Law.

It seems clear to us that the law of Mexico quoted in Defendant's brief shows, on its face, that the deed in question is in compliance therewith (R. 402.) Article 13 says that with regard to Mexican land, Mexican laws shall govern. Article 14 says that with regard to the form or external solemnities of public instruments, the law of the country where executed shall govern. There is no conflict between the two. Article 13 does not purport to apply to public instruments. Article 14 applies to nothing else. It should also be observed that Article 14 applies to all public instruments, and is not confined in its operation to instruments relating to either realty or personalty, but applies to both. Article 17 says that if the public instrument should have been executed by a foreigner, to be carried into effect in Chihuahua the maker may elect as to the law to which the internal solemnity of the act shall be subject insofar as concerns personal property; with regard to real property Article 13 shall be observed. There is no conflict between this article and either of the other two. The operation of this article is confined to internal solemnities and the operation of Article 14 is confined to external solemnities, so that as to the external solemnities of a contract, the provisions of Article 14 govern, whether the contract refers to personal property or real property, and provides that it may conform to the law of the country where executed. The resulting Mexican law is that an instrument valid

where drawn is valid in Mexico. The language of the statutes is so clear it is not susceptible of any other meaning.

If confirmation be needed, we refer to Mr. Valenzuela's testimony (R. 388). His opinion coincides with that of a celebrated disinterested witness:

> Volume 1, Verdugo's Commentaries on Mexican Civil Law, page 117, paragraph 157, reading as follows:
>
> "157. The form and external solemnities of contracts, wills and all public documents are governed by the law of the country in which such acts are performed, according to Article 14 of the Code of the Federal District, which corresponds to Article 11 of the Code of the State of Veracruz and to Article 10 of the State of Mexico.
>
> " 'A principle of law now generaly accepted,' says Foelix, 'is that the manner of performing acts is governed by the laws of the place in which said acts are performed or documents executed.'
>
> "In other words in order for a juridical act to be valid it is sufficient to observe the form prescribed by the law of the place where the act is performed or the document formulated. The act thus performed is legal and binding with respect to personal property or real estate situated in another country, although the laws of the other country prescribe formalities different from those of the place where the act is performed.
>
> "Such is the sense of the ancient maxim *'locus regit actum'*. The jurisprudence of all countries is in accord with the principle here announced, although not all of the codes are explicit with reference thereto."

Verdugo is one of the notable and accredited commen-

tators on Mexican Civil Law. Foelix is a notable French author of high repute and world renown.

In support of the principle above set out, Verdugo cites the provisions of the Roman Digest of Justinian, of the First and Fourth Partidas of the Spanish Code, the Civil Code of Italy, Civil Code of Holland, Civil Code of Chile, the Portugese Civil Code and the Code of the State of Louisiana.

Defendant in his brief, page 11, says:

> "It would be strange indeed if the law in the State of Chihuahua did not govern transfers of real estate situated within that sovereignty."

He then cites many authorities in support of that proposition. There has never been any disagreement between us on that point. The Chihuahua law does govern and, as heretofore clearly pointed out, provides that a transfer valid where drawn is valid in Mexico.

Defendant cites the Act of Chihuahua of 1856 in support of his contention that no foreigner could own land in Mexico without previous permit. The Mexican Constitution of 1857 was in force when the deed from Bennett H. Davis to Shapleigh, Ranken and Peck was executed February 13, 1897. It authorizes ownership of land in Mexico by foreigners without permit, and was therefore in conflict with the Act of 1856 which was repealed by it.

Defendant also makes the proposition that Plaintiffs' exhibits 20 to 28 were inadmissible because not registered. (R. 114.) These exhibits consist of the will of Charles H. Peck and the proceedings thereunder, and other instruments showing that the plaintiffs other than A. L. Shapleigh are the owners of the interests formerly

owned by Charles H. Peck and Thomas Ranken, Jr. It is our contention that A. L. Shapleigh, Charles H. Peck, and Thomas Ranken, Jr., in February, 1897, by deed from Bennett H. Davis, acquired, and afterwards held La Santisima as tenants in common; that El Guayuco was cut from La Santisima; that since said banco is now in the United States, the rights of the parties are governed by the laws of Texas; that under the law of Texas, one tenant in common may sue for and recover the entire tract; that the rights of A. L. Shapleigh are dependent on the deed of 1897 and are not affected by any heirship proceedings that might have been brought in Mexico by the heirs of Charles H. Peck and Thomas Ranken, Jr.

The Defendant, in his brief, on page 24 says that it appears to be irrelevant to discuss the abstract proposition of law involved in Plaintiffs' proposition that Shapleigh, as a tenant in common, has the right to recover the whole of the land, and then calls attention to the fact that in the deed to Shapleigh, Ranken and Peck, a definite fraction of the entire tract was conveyed to each of the three grantees. Under our law, a tenant in common may recover the entire tract, no matter how definite the description of his holding, provided there has been no partition. (*Sullivan vs. Sullivan,* N. Y. 4 Hun. 198, 200; *Words and Phrases,* Vol. 8 page 6908.)

Several times in his brief, Defendant says that the Governor of the State of Chihuahua found in his decree of expropriation, dated March 5, 1925, that Shapleigh, Ranken and Peck did not have title to La Santisima. It is difficult for us to believe that the Defendant could have read the decree and still make the statement that he does. It seems to us that almost exactly the opposite is true. A cursory reading of the decree (R. 253) would

show that it is little short of a specific finding that valid title was in Shapleigh, Ranken and Peck. In the preamble to the decree, the Governor recites that a memorial has been filed denouncing a latifundium composed of certain tracts of land which he describes, among them La Santisima, and then says (R. 254):

> "and concerning which lands, Thomas Ranken, Jr., Charles H. Peck, Alfred L. Shapleigh, Charles Davis and John J. O'Fallon *appear to be the owners.*"

Thereafter, no less than eighteen times in the decree the Governor refers to the owners in such a way as to clearly indicate that he has in mind as owners the people named in the preamble, and in the concluding part of the decree the said latifundium is expropriated from the five men mentioned in the preamble and from the Rio Bravo Land and Cattle Company. Nowhere in the decree is there a finding that Shapleigh, Ranken and Peck are not the owners of La Santisima. The most that can be said is that possibly a doubt is expressed, but in view of the fact that the land is expropriated from them there could hardly be any doubt in the mind of the Governor that they were the owners, and he clearly intimates from time to time through the decree that such is his opinion.

In this connection, we submit a thought which may or may not have any bearing on any issue in this case, but which seems to us very curious. If, as is contended by the Defendant, the Agrarian Law of the State of Chihuahua was contitutional and valid, and the Governor needed no authority to expropriate La Santisima except that it was too big for three men to hold, then why was it necessary for the Governor to make extensive findings as to the failure of Shapleigh, Ranken and Peck to comply with his orders, and why all the caustic comments in the

brief of the Defendant about the alleged contempt with which it is said the Plaintiffs treated the requests of the Governor. If the Agrarian Law is valid, then the Governor needed to make but two findings: That La Santisima was too big for three men to hold, and they had been ordered to divide it and refused. The whole proposition savors of an attempt by the Mexican authorities to jockey the Plaintiffs into a position where it would appear that the American owners had failed to comply with reasonable requests on the part of the Governor and therefore had forfeited their rights under the Mexican law.

The Defendant says (Brief 25) that our plea of limitation is bad because there is no evidence of possession, and if we had possession it was for less than twenty years, and he further says that we failed to plead the Mexican ten-year statute of limitation. In all these things, of course, we are very confident that the Defendant is mistaken. Since the land is now in the United States and in Texas, the pleading of limitation is governed by the laws of Texas. Under the law of Texas, limitation can be proved by the plaintiff without being pleaded. (*Reynolds vs. Lansford,* 16 Tex. 286; *M. K. & T. Ry. Co. vs. Wickham,* 44 S. W. 1023; *Benavides vs. Molino,* 60 S. W. 260; Writ of Error Denied, 60 S. W. 875; *Berry vs. Jagoe,* 100 S. W. 815; *Allen vs. Allen,* 105 S. W. 53; *Tillman vs. Erp,* 121 S. W. 547.)

However, we think the ten-year statute well pleaded. Certainly it was fully set out in Plaintiffs' abstract, and that would admit any necessary proof.

The eighth paragraph of Plaintiffs' Second Amended Original Petition, on which we went to trial, is as follows:

> "Plaintiffs further allege that they have had more than twenty years' possession of the land in controversy, founded on a just title in good faith, peaceful, continuous and public, and therefore they are vested with valid title by limitation to said land under the provisions of Articles 1065 et seq. (particularly Articles 1085 and 1092) of the Civil Code of the State of Chihuahua, Mexico."

Article 1092 of the Civil Code of the State of Chihuahua, Mexico, is as follows:

> "All real estate properties are subject to a limitation in good faith in ten years, and in twenty years in bad faith subject to the exceptions set forth in Article 1076."

As we pleaded good faith, the twenty years' possession pleaded would include any lesser term of possession, such as ten years necessary to establish limitation in good faith. Defendant apparently assumes that Plaintiffs must have lived on the land in question in order to prove possession. There is no warrant for such an assumption. The true owner is deemed to be in possession of land not in the adverse possession of another. (20 C. J. 248). The true owner in this case must be deemed to have been the Plaintiffs since they had the record title and there is not a scintilla of evidence of adverse possession on the part of anyone except the holder of the record title at any time within the scope of this controversy beginning in 1859, and running down to date, and there is abundant testimony that the holders of the record title at all times had possession of the property in controversy, either through themselves or their agents. In this connection, Articles 919 and 2983 of the Code of Chihuahua are significant:

> "Article 919. Possession is the tenancy of a

thing or the enjoyment of a right by ourselves or by another in our name." (R. 403.)

"Article 2983. If the thing sold is real estate, it is said to be delivered as soon as the conveyance is executed, or if there is no writing, as soon as the titles to the estate are delivered." (R. 419.)

In support of their plea of limitation, Plaintiffs called the following witnesses:

A. P. Coles, who testified that he had been in the real estate business in El Paso, Texas, since 1888, that he was personally acquainted with A. L. Shapleigh, Charles H. Peck and Thomas Ranken, Jr., and they had all three been in his office in El Paso, Texas. That he knew about the purchase of La Santisima in February, 1897, having known and represented the purchasers or some of them prior to that transaction, and he represented all three of the purchasers as long as they had possession of La Santisima. That he paid all the taxes required by the Mexican Government on said tract of land from 1898 until about 1927; that as agent for Shapleigh, Ranken and Peck, he employed Manuel L. Cardona to survey La Santisima, and they paid him for the work, and he paid Cardona. That Cardona delivered to the witness Map of La Santisima which he sent to Mr. Shapleigh. That Cardona was also employed to lease the land and remove squatters, both of which he tried to do. (R. 109.)

Manuel L. Cardona (R. 205), who testified that he was a Mexican engineer, formerly maintaining offices both in El Paso and Juarez. That in 1923 about March or April, at the instance of A. P. Coles, he surveyed La Santisima for Shapleigh, Ranken, and Peck, and they paid him for that service, as well as for other services subsequently rendered; that under Powers of Attorney received from the owners in 1924, which were offered in

evidence, he endeavored to lease La Santísima to tenants. That he interested many prospective tenants, but was unable to do business with them for the reason that they were unable to agree on the terms of a lease contract. That the purpose of the survey was to comply with the Agrarian Law of Chihuahua, and after completing the map, it was delivered to Mr. Delbert J. Haff, attorney for the owners. That as employee of Shapleigh, Ranken and Peck, the witness went with Mr. Haff to Chihuahua for the purpose of endeavoring to comply with the Agrarian Law.

Mr. Cardona further testified that he had been on La Santisima tract from time to time and that he used to go thereon every two or three months. Thus it is well established that Plaintiffs exercised dominion and control over the land in controversy and had actual physical possession of it either by themselves or through their agents from 1897 to 1925, a period of twenty-eight years.

Moreover, it seems clear from the testimony of Mr. Valenzuela that title by prescription in Mexico matures upon less intimacy with the soil than is required in the United States. (R. 244.)

With further reference to the question of limitation, the Defendant claims that the Plaintiffs in this case are not entitled to the benefit of the ten-year statute, and they never had twenty years possession, the contention being that possession did not begin until the permit was obtained August 25, 1897, and twenty years had not elapsed after that date until the Constitution of 1917 went into effect May 1 of that year. We have several answers, either one of which we think is complete.

In the first place, as stated many times by the Defendant in his brief, possession is a question of fact, and un-

der the facts and under the peculiar wording of the Mexican statute heretofore pointed out, upon the execution of the conveyance from Bennett H. Davis to Shapleigh, Ranken and Peck, February 13, 1897, there was a delivery and a going into possession, whether or not any of the grantees actually trod the dirt, and their possession began February 13, 1897, and when the permit was obtained August 25th of that year, it was merely confirmatory of their right of possession. If their possession began February 13, 1897, then the twenty years' limitation period had been completed before the Constitution of 1917 went into effect May 1st. Moreover, there is nothing in the Constitution of 1917 which made retroactive the inhibition against foreigners holding land in the prohibited zone, and in the absence of a specific provision to that effect, vested rights, such as Shapleigh, Ranken and Peck had been enjoying would not be extinguished, and their possession necessary to create limitation would continue. But, if the Court should entertain any doubt about this point, we still think that our possession necessary for prescription would not stop May 1st, 1917, when the Constitution of 1917 was adopted, for the reason that the provision as to inhibition of foreigners holding land in the prohibited zone was not self-executing and the organic law necessary to put it into effect was not adopted until December 31, 1925, and Plaintiffs' possession necessary to prescription would have continued until at least that date, if it really ever stopped, according to the provisions of the Constitutions of 1917.

Moreover, in claiming title by prescription, it is quite clear that under the Mexican law, Shapleigh, Ranken and Peck are entitled to take into consideration the eleven years' possession had by their predecessor in title, Bennett H. Davis, from 1886 to 1897. The point is con-

trolled by Article 1185 of the Code of Chihuahua, reading as follows:

> "Article 1185. He who prescribes may complete the necessary terms for his prescription, by uniting with the time which he may have possessed that which the person who transmitted the thing to him possessed, provided that both possessions have the legal requisites."

With further reference to the validity of the deed from Bennett H. Davis to Shapleigh, Ranken and Peck, conveying La Santisima, executed in El Paso, Texas, February 13, 1897, the attention of the Court is called to the following authority:

> Halleck, International Law, Vol. 1, page 199. "By the rules of International Jurisprudence recognized among the different nations of the European continent, as the *lex loci rei sitae* allows the property to be alienated by deed or will and does not require forms to be necessarily observed in the place where it is situated, the deed or will may be executed according to the law of the place where it is made, but the application of the rule is less liberal in Great Britain than in the United States, the formalities required by the laws of the states where the land lies being essential to the validity of the transfer."

Mexico, being a civil law country, would naturally follow the European rule.

In their criticism of the muniments of title of the Plaintiffs, the Defendant and his two experts lose sight of two doctrines that are well established in the law of Mexico, namely, that only parties to an instrument or a transaction can question its validity, and that in the absence of any question being raised, the document or transaction becomes ratified in due course. The applicable pro-

visions of the Civil Code of Chihuahua of 1898 are as follows (425, 426):

ARTICLE 1543:

The right to declare a contract void exists between the parties thereto and their bondsmen, excepting therefrom such cases as are expressly made and provided by law.

ARTICLE 1547:

The voluntary compliance with a contract by means of payment, renewal or any other act performed under the same circumstances, shall be considered a ratification thereof and thereafter it cannot be attacked as being void.

ARTICLE 1548:

The ratification and voluntary compliance with an obligation which is void by reason of lack of formality in whatever time the same may be made, extinguishes the right to have the same declared void, excepting therefrom such cases as are by law expressly provided.

The philosophy of interpretation of the experts of the Defendant is so rigid, and therefore, brutal, it leads to the suspicion that their judgment is overridden by their zeal. Mr. Miranda in his interpretations adhered literally to the precise text of the statutes and required of the Plaintiffs meticulous compliance with each and every provision thereof, and Mr. Castillo was almost as inflexible. In that attitude, they not only failed to follow their own jurisprudence, but they acted in direct violation of many rules of construction that prevail throughout the civilized world, such as that unless otherwise provided therein a substantial compliance with the terms of a contract is sufficient, and unless otherwise stated therein, time is not of the essence of a contract.

While we have endeavored to fully answer the attack

of the Defendant on the Plaintiffs' title, we still believe that we were not obliged to do so, and that such title is not subject to attack. It is difficult to treat seriously the contention of the Defendant that because the Trial Court qualified his finding to the effect that the Plaintiffs had valid legal title with the preface "if necessary", it did not amount to a finding because not necessary. Whether necessary or not, the fact remains that the Court did make a finding that the Plaintiffs had valid legal title to the lands in controversy, and to contend otherwise takes from legal proceedings that dignity and confidence that they are always entitled to receive. That a finding of fact not excepted to, cannot be reviewed on appeal is so elementary in Texas procedure as to scarcely justify citation of authority. *First National Bank vs. South Beaumont Land & Imp. Co.*, 128 S. W. 436; *Gulf C. & S. F. Ry. Co. vs. Clement Grain Co.*, 268 F. 535.

In this connection we further call the Court's attention to the fact that the Plaintiffs were the common source of title in this case, and it is also elementary in the law of trespass to try title in Texas that a junior title holder cannot question the validity of title of a common source. The expropriation proceeding, if valid, vested in the Governor of Chihuahua only that title which had formerly been in the Plaintiffs and since the title of the Defendant rests wholly on the validity of the expropriation proceeding, if the Plaintiffs never had title, the Governor of Chihuahua never got title, and the Defendant never took title. That would make the Defendant a mere naked trespasser and would entitle the Plaintiffs to recover on a showing of prior possession, which has been abundantly made out. *Evans vs. Foster*, 79 Tex. 48, 15 S. W. 170; *Branch vs. Daussen*, 108 S. W. 164.

The record in this case is in shape for this Court to

pass on every issue involved. A jury was waived. The District Court filed a memorandum opinion, entered a judgment, and later filed findings of fact and conclusions of law. All the rulings of the Court in the progress of the trial of the cause that were against the interests of the plaintiffs to-wit: the rulings admitting in evidence the alleged muniments of title of the defendant, were excepted to at the time and duly presented by a bill of exceptions and may be reviewed upon appeal. There is no Statute or rule of Court requiring such rulings to be assigned as error. It was contended by the plaintiffs that the muniments of title of the defendant were null and void and of no force or effect, and the action of the Court in upholding their validity was assigned as error, and if they were invalid of course they were not admissible in evidence for any purpose. In other words, when we assign as error the holding by the Trial Court that the instruments were valid, the assignment and the error necessarily include the collateral error committed in admitting invalid instruments.

The wholesomeness of the Mexican Agrarian Law and the expropriation proceeding thereunder has no bearing on any issue in this case, and is no concern of the courts. The question is whether the Mexicans tracked the law in plundering the plaintiffs. So far as sympathy is concerned, at least as much could be said for the plaintiffs as for the defendant, if it had any proper place in this proceeding. There is nothing in the record to indicate that the plaintiffs did not acquire the land in controversy in a lawful manner and for an adequate consideration, and they certainly lost it through a species of governmental theft.

CONCLUSION.

The uncontradicted evidence shows that plaintiffs were never paid for their land. All the law, international and municipal, organic and judicial, shows that plaintiffs cannot be deprived of their title until they are paid. Also, the Agrarian Law was unconstitutional, the expropriation proceedings thereunder by which it was attempted to deprive the plaintiffs of their land were irregular and beyond the powers of the Governor. Besides, the land in controversy was in the United States at the time the Governor of Chihuahua attempted to convey it to the defendant, which makes of the defendant a naked trespasser, and entitled plaintiffs to recover on a mere showing of prior possession. The trial court held that the plaintiffs were vested with valid legal title to the realty in suit at the beginning of the expropriation proceeding and each plaintiff sues as a tenant in common for the entire tract. Therefore, the judgment in favor of the defendant should be reversed and judgment here entered in favor of the plaintiffs.

Respectfully submitted,

J. F. McKENZIE,
H. R. GAMBLE,
Attorneys for Petitioners.

APPENDIX

APPENDIX.

"TRANSLATION"

ADMINISTRATIVE AMPARO, UNDER REVISION.

• • • •

District Court of Durango.

PLAINTIFF: Pastor Moncada widow of Blanco Teodora.

DEFENDANT: The Legislature and the Governor of the State of Durango.

GUARANTEES DEMANDED: Articles 14, 16 and 27 of the Federal Constitution.

ACTS COMPLAINED OF: Decree of December 4, 1917, issued by the Legislature, and the promulgation of the same made by the Governor.

Application of Article 27 of the Constitution, and interpretation of Art. 115 of the Magna Charta.

(The Supreme Court confirms the decision of the District Judge who granted the amparo.)

Summary.

LOCAL LEGISLATURES—Upon the Constitution establishing that these will have to be formed, at least, by 15 deputies, it does not refer to the quorum that the same requires to be legally constituted, but to the number of representatives belonging thereto; therefore, if calls have been sent out for the election of 15 deputies, and only those absolutely necessary have been elected to form a quorum according to law, the functioning of the Legislature cannot be objected as anti-constitutional.

EXPROPRIATION—This can only be made by reason of public utility and by paying indemnity.

INDEMNITY—Although Article 27 of the Constitution does not require previous indemnity, it does not either state that it will be left in abeyance, and it is therefore to be inferred that the indemnity will have to be simultaneous with the expropriation.

Even though it should be postponed, it is evident that it would have to be guaranteed in a precise, real and positive manner, since otherwise the expropriation would be equivalent to a despoliation.

DECREE OF DECEMBER 4, 1917, ISSUED BY THE STATE OF DURANGO: Not specifyiny anything in respect to indemnity for carrying to a head the expropriation, it is on that account in violation of Article 27 of the Constitution.

Mexico, July 5th, 1920. *Unanimous resolution.*

The suit of amparo, promoted by Teodora Pastor Moncada, widow of Blanco, before the District Judge of Durango, vs. acts of the Legislature and of the Governor of said State, for violation of Articles 14, 16 and 27 of the Constitution, having been reviewed, and

Resulting:

That the amparo suit states: that the Legislature of Durango, by decree of December 4, 1917, erected into a free town, by the name of "Villa Guadalupe Victoria" the hacienda de Tapona, owned by the plaintiff, who by the same decree, was expropriated of some of the buildings of said hacienda, of the ground on which the said buildings rest, and of one square kilometer of ground

intended for the town-site of the new village; that the Governor enacted, to be enforced, the decree to which reference has been made, and that, considering that these acts are in violation of the constitutional guarantees above mentioned, an amparo is requested against the same from Federal Justice.

Considering:

First: That the first part of the complaint is made to consist of the fact that the Legislature of Durango is composed only of twelve deputies, eleven proprietary, and one substitute, while Article 115 of Constitution provides that the local Legislature should be formed, at least, by fifteen proprietary deputies; it is to be assumed therefore, that the functioning of said Legislature being anti-constitutional, the decree subject matter of the complaint is void, and in it are violated the guarantees granted by Article 16, since the trouble and annoyance caused to the complaint have no legal basis. The interpretation being given to Article 115 of the Constitution is wrong, inasmuch as said precept, in establishing that the local Legislatures will have to be formed at least, by fifteen deputies, does not refer to the quorum needed by the same to function legally, but to the number of representatives that should belong to it; so that when calls have been sent out for the election of fifteen deputies, (as it appears from the files that was done in the State of Durango,) Article 115 already mentioned has been complied with; and the fact that in some districts elections could not take place, nor that for this reason the number of fifteen deputies was not completed, is an obstacle for the Legislature to be able to function legally, if for that purpose it counts with the quorum required

by law. There does not exist therefore, such violation of guarantees which are claimed for.

Second: The second point of the complaint is made to consist of the fact an expropriation is tried to be made against the plaintiff, without payment of the indemnity referred to by Article 27 of the Federal Constitution. It is true that this Article provides that the expropriation can only be made by reason of public utility, and through indemnity. In what respects to this last requirement, it should be said that, *even although Article 27 does not require previous indemnity, it does not provide that it can be postponed;* hence logically and juridically speaking it must be inferred that the *expropriation and indemnization should be simultaneous;* and even in the wrong supposition that the latter could be postponed, it it evident that it had to be guaranteed in a precise, real and positive manner, since without these requirements, such expropriation would amount to despoliation, and our Magna Charta does not authorize such an outrage. Now well, as the decree on which the complaint is based does not order that the indemnity should be previous, nor simultaneous, and does not even establish the form in which it should be covered or guaranteed, as this is subject to the stipulations of a future enactment, it is evident that said decree violates, for this reason, Article 27 of the Constitution; and therefore, it is proper to concede the ampara as requested.

For the above considerations, and not for those set forth by the District Judge in his resolution, it is resolved:

First: The resolution of March 18th, 1918, is hereby confirmed, by which the District Judge of Durango granted to Teodora Pastor Moncada viuda de Blanco, the

amparo requested against acts of the Legislature and of the Governor of said State, consisting, in what respects to the former, in the issuance of decree number 25, of December 4th, 1917, to which reference has been made; and, in respect to the latter, in the promulgation of said decree, for its compliance.

Second: Let notice be given; let publication be made; with certified copy of this resolution, returning the records to the court of their origin and in due time let the "Toca" be filed in the archives.

Thus decreed the Supreme Court of Justice of the Nation by unanimous vote, in relation to the result of the decision and by majority of six votes with relation to the basis or reason upon which the same is founded. Minister Urdapilleta and President Moreno granted the amparo, both for the reason that it is pretended to expropriate the plaintiff without paying her any indemnity, as well as because it is pretended to carry on said expropriation without existing therefor a reason of public utility; Minister Sabido granted it for the fact that the expropriation may have been decreed, without previously, there having been issued in the State of Durango, the law to determine in which cases the occupation of private property is for public utility, as provided by Article 27 of the Constiution. Ministers Alcocer and Gonzalez were not present at the meeting. The following citizens set their hand and seal, with the Secretary who attests: Enrique Moreno, Adolfo Arias, Benito Flores, Ignacio Noris, Patricio Sabido, Agtn Urdapilleta, E. Garza Perez, Gustavo A. Vicencio, Jose M. Mena, F. Parada Gay, Secretary.

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IN THE

SUPREME COURT of the UNITED STATES

No. 125

A. L. SHAPLEIGH, ET AL,

VS.

PASCUAL C. MIER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT

RICHARD F. BURGES,
Attorney for Respondent.

WALTER S. HOWE,
Of Counsel.

ELLIS BROS.

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IN THE

SUPREME COURT of the UNITED STATES

No. 125

A. L. SHAPLEIGH, ET AL,

VS.

PASCUAL C. MIER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT

OPINIONS BELOW

The memorandum decision (unreported) of the District Court of the United States for the Western District of Texas, is in the record, at page 428. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit, (R. 454), (official report unavailable), is reported in 83 Fed., (2nd), 673.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 21, 1936. (R. 460). Petition for Certiorari was filed June 19, 1936. Certiorari was granted October 12, 1936. Jurisdiction is conferred on this court by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Petitioners have not correctly set forth the questions presented upon this appeal.

1. We take no exception to the First Question, which questions the validity of the expropriation proceedings, conducted by the Governor of the State of Chihuahua, Mexico, although the question, as stated by counsel, on page 2 of their Brief, contains the assertion that the District Court held that valid record title was once vested in plaintiffs in error. The trial court, in its "Findings of Fact 2", states:

> "Under the holding of the Court as to the law in this case, it is probably unnecessary for the Court to rule upon the validity of Plaintiffs' title prior to the expropriation thereof under the Constitution of 1917, but if necessary to pass and rule on same, the Court finds that the plaintiffs are shown to have record title to the land in dispute, under the laws of Mexico at the time of the adoption of the Federal Constitution of 1917."

Whether this constitutes a finding of fact that title was vested in plaintiffs will be discussed in this brief.

2. To Question 2, page 2 of Brief of plaintiffs we take no exception.

3. Question 3 of "Questions Presented", page 2 of Brief of plaintiffs, presents an issue nowhere raised in the record in this case. Defendant frankly disclaims any power

in the Governor of Chihuahua, or any Mexican authority whatsoever, to convey title to land after it came under the jurisdiction of the United States, and we maintain that under proper construction of the Banco Elimination Treaty of 1905, dominion and jurisdiction over the Guayuco Banco, (the land here in issue), passed to the United States of America when the land was avulsively cut to the East or American bank of the river in 1926.

Counsel have consistently and persistently argued that defendant deraigns title through a deed executed by the Governor of Chihuahua to Pascual C. Mier, dated February 20, 1930, said deed appearing in the Record, page 277.

In order that there may be no misconception on this question, defendant respectfully invites the attention of the Court to his application to purchase the portion of "La Santisima" embracing the land in controversy, dated March 14, 1925, and appearing in the Record, pages 269 to 272, and the corresponding Executive Power, acknowledging such application, appearing in the Record, pages 273-274.

Attention is also respectfully invited to the Nineteenth Finding of Fact of the trial court, (Record, p. 437), and the Tenth Conclusion of Law, (Record, p. 440), wherein the Court held that the application of Pascual C. Mier, under the laws of Mexico, vested in him a right and interest in the land. The Court nowhere held, and counsel for defendant have never suggested that the deed of February 20, 1930, was effective to convey title. In justice to the Mexican authorities, perhaps it should be stated that in 1930 no decision of any tribunal had established the date when dominion and sovereignty over a banco passed to the nation to which the banco became attached. The diplomatic correspondence, of which we believe the Court takes judicial knowledge, discloses that

Mexico contended that dominion and sovereignty did not pass until the International Boundary Commision had entered its decree. Counsel for petitioner in this case, we believe, supported that contention.

We have never entertained any doubt that the Banco Elimination Treaty of 1905 established the actual river as the boundary, whenever the banco was cut off, unless its area exceeded two hundred and fifty hectares or its population exceeded two hundred souls. Acting under this belief, doubtless, the Governor of Chihuahua executed to Pascual C. Mier his deed and correction deed. Upon the trial of this cause, counsel for Pascual C. Mier, defendant herein, introduced that deed and correction deed to show that, under Mexican law, the application to purchase, when filed with the Governor, vested an inchoate right or title in Mier, which, under Mexican law, would ripen into title, upon compliance with the terms of the law, just as in Texas the bid of the first purchaser, when public domain is offered for sale, vests in the bidder the right to a patent, upon compliance with the law.

We have felt it necessary to enter into this explanation at some length, since counsel iterated in the trial court, reiterated in the Circuit Court of Appeals, and reiterates here the statement that Pascual C. Mier deraigned title from the Governor's deed of 1930, when, in truth and in fact, we have at all times admitted that the Governor of Chihuahua was wholly without power to affect the title of the Guayuco Banco, in any form or manner whatsoever, after it was cut from Mexico in 1926.

In addition to the questions presented above, defendant submits that the following questions are presented:

4. The land in controversy being admitted to have been

within the State of Chihuahua, Republic of Mexico, at the time of the expropriation proceedings, and subject to the sovereignty and jurisdiction thereof, will the courts of the United States question the validity of the laws of Mexico under which the land was expropriated, while located in that Republic, or question the validity of the governmental acts of Mexico with reference to such title, while the land was situated within its sovereign jurisdiction?

5. Did plaintiffs ever acquire or hold title to the land in controversy under the laws of Mexico?

STATEMENT OF THE CASE

Throughout this brief, for the sake of convenience, and to correspond to the brief of "petitioners", (plaintiffs), the parties will be referred to as they appeared in the trial court and in the Circuit Court of Appeals, appellants being plaintiffs in the courts below, and appellee being defendant in the courts below.

The Statement of the Case as set forth in plaintiffs' Brief is accepted as substantially correct, with these exceptions:

First: Defendant denies that plaintiffs pleaded the Mexican Statute of Limitation of ten years in good faith, inasmuch as no mention thereof is made in the original petition, upon which ths case was tried.

Second: As before stated, defendant does not claim that the instruments introduced in evidence by him vested in him a valid title to the land, his contention being that he has an inchoate right, which was vested in him upon the filing of his application to purchase the land, after the expropriation proceedings, as will be hereinafter more fully set forth.

Third: Defendant does not believe that the District

Court found that plaintiffs had record title to the land involved, at the time the Mexican Constitution was adopted, May 1, 1917, for the reason that such finding of the Court was stated to be a finding only "if necessary", and it was not necessary for the Court to make a finding on that subject.

It will be noted that this case was tried before the District Court without a jury, a jury having been waived by written stipulation filed. See Memo. of decision of the Court, (Record, p. 428), and judgment of the Court, (Record, p. 432). It would therefore appear that under 28 U.S.C.A., Sect. 773, the Court's Findings of Fact are to have the effect of a special verdict; that since there are no rulings on demurrers, in accordance with 28 U.S.C.A., Sec. 875, review upon appeal is confined to rulings of the Court in the progress of the trial, if excepted to at the time and duly presented by bill of exceptions, and to the question whether the facts found by the Court support the judgment.

As we understand, the power of the appellate court is restricted within these limits, as found by the Circuit Court of Appeals, citing:

Lewellyn vs. Electric Reduction Co., 275 U. S., 243.
Fleischmann Co. vs. United States, 270 U. S., 349.
Harvey Co. vs. Malley, 288 U. S., 416.
Eastman Kodak Co. vs. Gray, 292 U. S., 332.

Though the Bill of Exceptions shows numerous objections to admission of evidence, which were overruled in the final judgment and exception allowed, none of these rulings were assigned as error. There was no motion by plaintiffs (appellants) for a judgment on the facts generally, none for finding of any special facts. It would therefore appear that assignments that the Court erred in finding special

facts cannot be considered on appeal, under Section 875, above cited.

Counsel repeatedly questions the holding of the Circuit Court of Appeals that the Court must accept the facts as found by the trial court, but as we understand Sections 773 and 875, no other course was open to that Court.

For the convenience of the Court, we copy from the Record the trial Court's Finding of Fact and Conclusions of Law. (Record, pages 434 to 440):

FINDINGS OF FACT

1. This is a suit in trespass to try title, involving the lands known as the Guayuco Banco, which the evidence in the case discloses was cut from Mexico to the United States during the year 1926, and eliminated in accordance with the treaty between the United States and Mexico, signed at Washington March 20, 1905, and proclaimed June 5, 1907, plaintiffs claiming title by virtue of a chain of conveyances from the sovereignty of the soil, to-wit, the Republic of Mexico, as well as by limitation, under the Mexican Statutes applicable thereto.

2. Under the holding of the Court as to the law in this case, it is probably unnecessary for the Court to rule upon the validity of plaintiffs' title prior to the expropriation thereof under the Constitution of 1917, but if necessary to pass and rule on same, the Court finds that the plaintiffs are shown to have record title to the land in dispute, under the laws of Mexico, at the time of the adoption of the Federal Constitution of 1917.

3. Neither the plaintiffs, nor their agents or employees ever had pacific, continuous, physical, public possession of the premises required by the laws of Mexico for the period of time

required by the laws of Mexico to vest title by prescription.

4. There was no evidence of pacific, continuous, public actual possession of the land by the plaintiffs or anyone through whom they deraigned title, for any period of time.

5. Neither the plaintiffs nor anyone through whom they deraigned title had permission to acquire or hold title within the zone in which the premises are situated on February 13, 1897, at the date of the deed from Bennett H. Davis to Shapleigh, Peck and Ranken.

6. The permit of A. L. Shapleigh, Charles H. Peck and Thomas H. Ranken to acquire and hold title to land within the prohibited zone, in which this land is situated, was issued and dated August 25, 1897.

7. None of the plaintiffs in the case at bar ever received or acquired the right to acquire or to hold title within the prohibited zone, with the exception of A. L. Shapleigh.

8. The Federal Constitution of Mexico of 1917, proclaimed May 1, 1917, authorized and directed the States of the Mexican Republic, including the State of Chihuahua, to pass agrarian laws to compel the division of large landed estates. (Latifundia).

9. In accordance with such mandate of the Federal Constitution of Mexico, the State of Chihuahua enacted such an Agrarian Law on May 25, 1922.

10. The proclamation and other legal proceedings by which the Governor of the State of Chihuahua undertook to expropriate the latifundium comprising "La Santisima", "San Antonio", "El Comedor" and "Vado de Piedra", were regular and in accordance with the then existing laws of the State of Chihuahua, and in all respects conformed to the requirements of the Constitution of 1917, and of the Agrarian Law of the State of Chihuahua.

11. That the tracts of land referred to in the above Finding 10 comprised approximately..... .....hectares, (..... acres), and constituted a latifundium, within the definition of the Agrarian Law of the State of Chihuahua.

12. That prior to the passage of the Agrarian Law of the State of Chihuahua, no portion of the land comprising the latifundium is shown to have been cultivated, occupied or inhabited.

13. That subsequent to the passage of the Agrarian Law and the expropriation of the latifundia, approximately 4,000 people have settled thereon.

14. The plaintiffs and those through whom they deraigned title were notified of the expropriation proceedings, and given the opportunity to comply with the Agrarian Law of the State of Chihuahua, and failed to do so.

15. In the course of the expropriation proceedings, the Governor of the State of Chihuahua officially determined that none of the plaintiffs were entitled to acquire or hold real estate within the prohibited zone, the prohibited zone being a strip of land twenty (20) leagues in width along the national boundary line.

16. The Constitution of 1917 and the Agrarian Law of the State of Chihuahua do not require that compensation be paid prior to or at the time of expropriation and taking of land by the State, or that payment for same be then provided for.

17. Claim for compensation for land expropriated under the Constitution of Mexico and the Agrarian Law must be urged and collected through the courts of Mexico, having jurisdiction to determine the amount thereof and who is entitled thereto.

18. Plaintiffs lost all title which they had to the lands in question by virtue of the Constitution of 1917, of the Agrarian Law of the State of Chihuahua of 1922, passed in obedience thereto, by the proclamation and expropriation proceedings by the Governor of the State of Chihuahua, of date March 5, 1925, and the title to such land thereby became vested in the State of Chihuahua and subject to sale and disposition in accordance with the laws of said State.

19. In accordance with the terms and provisions of the laws of the State of Chihuahua and of the Republic of Mexico, relating thereto, the defendant, Pascual C. Mier, on March 14, 1925, filed with the proper authorities his application to purchase from the State of Chihuahua certain lands, embracing the lands in controversy, and thereby acquired a right and interest in the same.

20. Said land, at the time of its expropriation, and at the time defendant Pascual C. Mier filed application to purchase same, was located in the State of Chihuahua and under the sovereignty and jurisdiction of that State and of the Republic of Mexico.

21. The land in controversy, designated as El Guayuco Banco, was cut from the South or right bank of the Rio Grande to the North or left bank of the Rio Grande by an avulsive change in the course of the Rio Grande in the year 1926, and constitutes a true banco, within the meaning of the banco elimination treaty proclaimed June 5, 1907.

22. That by the treaties applicable and the decision of the International Boundary Commission, promulgated March 3, 1930, dominion and jurisdiction over the Guayuco Banco passed to the United States of America, giving this Court

jurisdiction over the controversy involving the title to the land here in question.

23. The Constitution of Mexico of 1917, Article 27, proclaimed May 1, 1917, relating to the Agrarian Laws and directing the enactment of such by the various Mexican States, precluded plaintiffs' claim to the land in controversy from ripening into title by possession, even if it could be held that the plaintiffs had been in possession of said land, which the Court does not hold.

24. The Agrarian Law of the State of Chihuahua, enacted May 25, 1922, is constitutional and valid under the Constitution and laws of Mexico.

25. The expropriation proceedings and the proclamation and acts of the Governor of the State of Chihuahua, of date March 5, 1925, are regular and valid under the laws of Mexico, where the land in controversy was located at the time such action was taken.

26. The State of Chihuahua, Republic of Mexico, was vested with jurisdiction and sovereignty over the land in controversy at the time of the proclamation of the Constitution of 1917, and at the time of the expropriation proceedings by the State of Chihuahua.

27. By virtue of the expropriation proceedings, the plaintiffs became divested of any and all title they may have had in and to the lands in controversy.

28. The Agrarian Law of the State of Chihuahua has been held and construed to be valid and constitutional by the courts of last resort of the United States of Mexico, and by the superior courts of the State of Chihuahua.

29. None of the plaintiffs are shown to be citizens of

the Republic of Mexico, but are foreigners thereto.

30. The plaintiffs were represented by counsel in the expropriation proceedings, but failed to comply with the orders of the Governor to present proof of title and of the right to hold title within the prohibited zone, and they thereafter presented to the International Claims Commission, United States and Mexico, a claim for the restitution of the lands and for damages.

CONCLUSIONS OF LAW

1. Plaintiffs have not shown title in themselves to the lands in controversy.

2. The Agrarian L[illegible] of the State of Chihuahua of May 25, 1922, is a valid and constitutional act authorized by the Federal Constitution of Mexico of 1917, proclaimed May 1, 1917.

3. The proclamation and other legal proceedings of the State of Chihuahua and the Governor thereof, relating to the expropriation of the land in controversy, were regular and legal under the then existing laws of the State of Chihuahua, and divest plaintiffs of any and all title, if any they had, to the premises in controversy.

4. By virtue of the expropriation proceedings of the State of Chihuahua and the Governor thereof, acting under the laws of said State, the title to the land in controversy became vested in the State of Chihuahua, and subject to sale in the manner prescribed by the then existing laws of the State of Chihuahua.

5. Under the Constitution of Mexico of 1917, foreigners had no right to acquire title to real property in the prohibited zone.

6. Under the Constitution of Mexico of 1917, payment for land expropriated for public use is not required to be made in advance, or at the time of such expropriation, but payment therefor may be made subsequent to the taking

7. Claim for compensation for land expropriated under the laws of Mexico must be sought through the courts of Mexico, or, if sought by foreigners, may be sought through the political department of their Government.

8. Plaintiffs never acquired title to the land in controversy by limitation or prescription, under the laws of Mexico.

9. The land in controversy being shown to have been within the State of Chihuahua, Republic of Mexico, at the time of the expropriation proceedings, was subject to the sovereignty and jurisdiction thereof, and the validity of such proceedings must be determined by the laws of Mexico and by the courts thereof.

10. Title to the land in controversy having been vested in the State of Chihuahua by the expropriation proceedings, was subject to purchase under the terms of the expropriation law, and the defendant Pascual C. Mier having filed application to purchase the same on March 14, 1925, he thereby acquired a legal right to and interest therein.

11. By virtue of the treaties applicable and the action of the International Boundary Commission, promulgated March 3, 1930, defining and declaring the Guayuco Banco, the dominion and jurisdiction over same passed to the United States of America, giving this Court jurisdiction over this controversy, involving the title to the lands in question.

SUMMARY OF THE ARGUMENT

"La Santisima", (of which the lands in controversy form a small tract of approximately 337 acres in extent, avulsively

cut to the United States in 1926), comprised a vast tract of land in the State of Chihuahua, Mexico, lying contiguous to the Rio Grande, being some 140 miles in length and two leagues in width, an area larger than the State of Rhode Island.

Plaintiffs claimed to deraign title from the Mexican Government, by virtue of a confirmation by the Federal Executive, dated October 29, 1864, purporting to confirm a grant alleged to have been made by the State of Chihuahua in 1859. The land lay within what is known as the prohibited zone, twenty leagues in width, along the National Boundary, within which, previous to the Mexican Constitution of 1917, no foreigner could acquire or hold title without the consent of the Federal Government previously granted.

The series of conveyances through which plaintiffs claimed title were in flagrant disregard of the mandatory provisions of Mexican law regulating the conveyance of real property.

Under the Federal Constitution of 1917, no foreigner could acquire title to real estate within the prohibited zone, though titles then valid could be held, subject to provisions looking to the ultimate disposal thereof.

In attempting to disintegrate vast landed estates, (latifundia, throughout the Republic, and to distribute the land among the people, the Constitution of 1917 enjoined upon the several States of the Mexican Confederation the passage of agrarian laws, providing for the subdivision and sale by the owners of these vast estates, and in the event of the failure of the owners so to sub-divide and sell, for the expropriation of the latifundium and its sale to purchasers thereof, the owners to be compensated by the issuance of bonds provided by the Constitution.

From the date of the alleged grant of this vast estate in 1859, to the date of its expropriation on March 5, 1925, no acre of this vast estate is shown to have been cultivated, occupied or inhabited. (It is interesting to note that since its expropriation, more than 4,000 people have settled thereon).

In 1924 proceedings were instituted by the Government of Chihuahua to compel the sub-division and sale of "La Santisima", and the plaintiffs herein were duly cited as the claimants and apparent owners of title to said lands. The proceedings by virtue of which this latifundium was expropriated are set forth in full in the record. (Record, pp. 253 to 268). The plaintiffs appeared before the Governor, by counsel and by their engineer, employed to survey and subdivide the land. They were called upon to produce evidence of their title, and also of their right to hold title within the prohibited zone. They requested and received delays or postponements, first, for a period of three months, and again for a period of two months, but they failed to produce either evidence of their title or of their right to hold title within the prohibited zone, and to this day only one of the plaintiffs, A. L. Shapleigh; has ever exhibited evidence of a permit to acquire land within the prohibited zone, that permit having been first produced on the trial of this case in the United States Court.

The expropriation proceedings, conducted by the Governor of Chihuahua, under the provisions of the Mexican Constitution and Mexican law, and, as the trial Court found, in strict conformity thereto, were in no sense ex parte, the requirements appear to have been in every respect just and reasonable, and, in spite of delays granted them for the purpose, no effort appears to have been made by the plaintiffs to meet the reasonable requirements of the State and Federal

law. On the contrary, plaintiffs filed a claim before the United States-Mexican Claims Commission for restitution of these lands and damages therefor, and there, so far as the record discloses, the claim is now pending. Should they sustain their claim before the Claims Commission and recover the land or damages therefor, and sustain a recovery in this suit, there would be a double recovery as to the lands in controversy.

Subsequent to the expropriation of "La Santisima", the defendant, Pascual C. Mier, applied to the State Government to purchase a portion of the lands, which application was filed and accepted. Under the laws of Mexico, being the first applicant to purchase a given tract, defendant acquired a vested right, which would ripen into title upon payment of the purchase price fixed by the State. Counsel ridicules the price paid for that portion of the land comprised in the Guayuco Banco, but the agrarian law set forth in the record, (Record, pp. 329 to 351), discloses that the purpose of sale was not for profit, but for sub-division and settlement and development, at the taxable value of the land, plus ten per cent.

We contend that the courts of this country will not sit in judgment upon the proceedings of a foreign State or the official acts of its duly constituted authorities with reference to the title to property located within that jurisdiction and subject to the sovereignty of that State, and that this doctrine is especially applicable to the title to real estate; that foreigners owning property within a nation cannot complain of the adoption, enactment or enforcement of the laws of that country, if they bear with equal justice and equal burden upon the citizens or subjects of that country; that if a foreigner is aggrieved by the governmental acts of any nation, performed within its own territory and sovereignty, such foreigner must

seek redress either in the courts of the country or through the political department of his own government; that not only did the treaty or Convention between the United States and Mexico not provide a different rule, as contended by plaintiffs in their brief, but that by the terms of Article 9 of the Convention, it is expressly provided that when the claim of an American claimant to lands is sustained by the Commission, the Commission shall at the same time ascertain the value of the land, and the Government of Mexico, at its option, might restore the land or compensate the owner therefor.

In the instant case the plaintiffs, while presenting their claim through the Claims Commission for the restitution of "La Santisima", including the lands now embraced in the Guayuco Banco, and for damages therefor, seek in this case to deprive the defendant of his title and rights, acquired under Mexican law, when the land was in Mexico.

Under Title 28, U.S.C.A., Sections 773 and 875, we regard the Findings of Fact by the trial Court as conclusive upon the issues of fact found. Except that, believing that the conditional finding of plaintiffs' record title is not such a special verdict as the law contemplates, we set forth in this brief the reasons why we think that the Court may inquire into the validity of plaintiffs' title prior to 1917, and point out what we conceive to be the fatal defects in that title. This case, however, as we conceive it, is a suit in trespass to try title, which is a statutory proceeding, under the laws of Texas, and the plaintiffs must recover upon the strength of their own title, and upon failure to prove such title, judgment is for the defendant, as was rendered in this case.

Plaintiffs excoriate the Mexican Government for not having compensated them for the lands expropriated, but they utterly failed to lay before the Governor of Chihuahua

proof either of their title or their right to acquire or hold title within the prohibited zone, and the record does not disclose that they have ever sought, in the courts of Mexico or before the Executive Departments, to vindicate the title which they had wilfully or negligently failed to produce, when lawfully called upon so to do, and that in the face of a direct finding, (in a proceedings in which they were represented by counsel and were participating), that they had failed to produce evidence of title or the right to hold title, and in the face of the Executive Decree that the owners of the land should be indemnified, in accordance with the Federal Constitution and the agrarian law of the State, they appear to have made no move whatever to vindicate their title or to claim compensation therefor, except in the proceedings now pending before the Claims Commission.

Defendant does not question that sovereignty over the Guayuco Banco passed to the United States sometime during the year 1926, when it was cut from Mexico. This case being a statutory action of trespass to try title, brought and tried in accordance with the statutes of Texas applicable, plaintiffs must recover on the strength of their own title, if any. If they fail so to do, the defendant is entitled to judgment and consequently the argument naturally divides itself into two general parts:

(a) An inquiry into the title of plaintiffs.
(b) An exposition of the title of defendant.

ARGUMENT

Part I.

THE PLAINTIFFS' TITLE

The inquiry into plaintiffs' title involves, we believe, three separate and distinct propositions of law:

First: Did plaintiff ever acquire valid record title, or title by prescription, to the premises involved?

Second: If title was ever in the plaintiffs, did they lose it by the expropriation proceedings?

Third: Appellants having been deprived of the property by act of another nation, acting within its territory, may they challenge the taking in the courts of this country?

FIRST

Appellants in their brief rely upon the proposition that the court affirmatively found they had title at the time the present Constitution of Mexico was adopted, to-wit, May 1, 1917. Apparently, they rely for this upon the second finding of fact of the trial court, which reads, as follows, (R. 434):

> "Under the holding of the court as to the law in this case, it is probably unnecessary for the court to rule upon the validity of plaintiffs' title prior to the expropriation thereof under the Constitution of 1917, but if necessary to pass and rule on same, the court finds that the plaintiffs are shown to have record title to the land in dispute, under the laws of Mexico, at the time of the adoption of the Federal Constitution of 1917."

Fully realizing that there can be no cross assignments of error asserted unless an appeal be taken, defendant nevertheless believes there are four reasons why the record title of plaintiffs may be inquired into.

First: It was not necessary for the court to hold as a fact, or as a matter of law, that plaintiffs ever had valid record title prior to 1917, because the court expressly held that in the event they ever did have title, they lost it through the expropriation proceedings. This would have been sufficient to dispose of the case and in the language of the trial court it expressly held that only "if necessary" would it pass

upon the question of the validity of plaintiffs' title prior to 1917. Inasmuch as it was not necessary to pass upon that title to obtain the result the trial court did, this court may inquire into the title alleged to be held by plaintiffs.

Second: The above quoted finding of the trial court is a finding of fact and is not included in the conclusions of law of the trial court. We believe that the validity of a title necessarily calls for a conclusion of law and the court did not conclude as a matter of law that the muniments exhibited conveyed a valid, legal title. Possession of title is a fact, but instruments showing the validity of a record title call for a conclusion of law concerning the muniments on which it rests.

Third: This court may inquire into the validity of plaintiffs' title prior to 1917, or at any time, for the reason that it is a well established principle of law that the Appellate Court will not reverse a case where the right result has been obtained, even though the reasons whereby such result was obtained may be erroneous. Consequently, if the decision of the trial court was correct, even though his reasoning was wrong, the case should be affirmed.

Fourth: This being a statutory action of trespass to try title, plaintiffs must recover, if at all, solely upon the strength of their own title and consequently we submit that that this court will scrutinize whatever title the plaintiffs may have had.

Having asserted the foregoing reasons for inquiring into the plaintiffs' title, we now turn to such inquiry.

The deed from Ignacio MACMANUS, dated December 6, 1886, to Bennett H. Davis, conveyed no title, for the reason that it affirmatively appears from the instrument itself, and from the official endorsement made on it, that it must be

accompanied by a particular description of the land and a map showing the land sought to be claimed or held under the instrument, and no such map accompanied the instrument and no map appears in the record thereof. (R. 73-82.)

That said deed from MACMANUS to Davis was wholly ineffective to convey title, for the reason that it affirmatively appears from the record above cited that the instrument was first tendered for record in 1924, after the adoption of the Constitution of 1917, and after the promulgation of the organic law putting Article 27 of the General Constitution into effect, and after the adoption of the Agrarian Law by the State of Chihuahua, wherein it is specifically required that before any alien may acquire a title within the prohibited zone, or before he may execute any transfer or cause the same to be recorded, or before any notary public may transcribe or record such a transfer, or that any public official may do any act or thing recognizing said transfer or purporting to give any validity to it, that he must first obtain permission from the Federal authorities in the City of Mexico to authorize the execution and recording of such instrument and the transfer or acquisition of any right thereunder.

The above objections were duly offered to the introduction of such instrument, as appears from page 73 of the Record, and the instrument was permitted to be read, subject to a reserved ruling of the court as to its admissibility.

Article 53 of the Agrarian Law is specific on this question. (R. 345.)

The Agrarian Law was promulgated May 25, 1922. The MACMANUS deed above referred to was registered April 14, 1924.

Section 53 of the Agrarian Law reads as follows:

"ARTICLE 53. Every transfer of ownership of land which may be made after the promulgation of this law, and by virtue thereof, shall be communicated to the Executive of the State, to which end the interested parties in each case, shall give proper notice to the Department of State, attaching the map and the necessary data for the identification of the property, the subject of such contract.

"To which end the notaries shall not authorize any written instrument with reference to such transfers unless there shall be exhibited to them the evidence which has been noted concerning the procedure of the Department of State.

"Likewise, those in charge of the public registry of property shall not inscribe or record any title of said transfers without the respective 'testimonio' (certified copy), which shall state that said requisite has been complied with, or in case of a private instrument, without the evidence referred to accompanying such private instrument.

"Violation of this ruling shall render the title null, and in such case the record thereof also."

It is respectfully submitted that the deed from MacManus to Davis, by virtue of the express provisions thereof, was incomplete and lacked essential legal requirements, as is shown in the Fifth Paragraph thereof, until Davis should present the "testimonio" thereof with a supplement which explains those requirements and even the corresponding maps." (R. 79.)

It is obvious that the required supplement and "testimonio" were not made before its date, March 5, 1924. Waiving the question as to whether such action could be taken subsequent to the death of Mr. Bennett H. Davis, which occurred during the month of May, 1897, (R. 394), it is obvious that

the supplemental "testimonio" was essential to the validity of the deed from MacManus to Davis. It would seem that the last paragraph of Article 53 above quoted disposes of the validity of the MacManus deed.

The deed from Bennett H. Davis to Thomas H. Ranken, Charles H. Peck and Alfred L. Shapleigh, (R. 119-124), is not a valid instrument, under the laws of Mexico, for the following reasons, to-wit:

(a) Said deed shows utter lack of mutuality, having been executed in El Paso, Texas, in conformity with the laws of Texas, perhaps, but wholly without regard to the Mexican Statute prescribing the essentials of such instruments, in that said deed shows upon its face lack of the mutuality of contract required by the laws of Mexico and the State of Chihuahua, and is not executed, as the law requires, by the grantee, as well as the grantor.

(b) Said deed from Davis to Ranken and others was invalid upon the face thereof, because it did not show the capacity of the grantees to enter into such contract, and it affirmatively appears from the record that neither Ranken, Peck nor Shapleigh, at the date of said deed, had capacity to acquire land within the prohibited zone.

(c) It affirmatively appears from the copy of said instrument and the protocolization thereof (R. 126), that said instrument was never filed for regist and was never registered in Mexico until the 13th day of July, 1922, which was after the promulgation of the Agrarian Law, and the instrument shows upon the face thereof that Article 53 of the Agrarian Law was not complied with.

For the convenience of the Court we will quote here the articles of the Civil Code of the State of Chihuahua which,

in our opinion govern the validity of the deeds from MacManus to Davis and from Davis to Ranken and others. The references are to the Articles of the Code of 1882, by number, it being understood, as testified by the experts, that the words "State of Chihuahua" should be substituted for "Federal District" and the "Territory of Lower California," and, for convenience, the words "State of Chihuahua" have been substituted herein.

> "Art. 13. With regard to real estate (immovables) situated in the State of Chihuahua, the Mexican laws shall govern, although such immovables may be owned by foreigners."
>
> "Art. 14. With regard to the form or exterior solemnities of contracts, wills and every 'public instrument', the law of the countries in which they shall have been executed shall govern. Nevertheless, Mexicans or foreigners residing outside the State of Chihuahua, are at liberty to subject themselves to the laws and formalities prescribed by Mexican law, in those cases in which the act has to be put into execution within those demarkations."
>
> "Art. 16. The obligations and rights which arise from contracts or wills executed in a foreign country by Mexicans of the State of Chihuahua, shall be governed by the provisions of this Code, in case such acts are to be performed within the demarkations referred to."
>
> "Art. 17. If the contracts or wills spoken of in the preceding article should have been executed by a foreigner and have to be carried into effect in the State of Chihuahua, the maker shall be at liberty to elect as to the law to which the internal solemnity of the act has to be subject, in respect of an interest which consists of personal (movable) property. *With regard to real property, the provisions of Art. 13 shall be observed." (Italics ours.)*

"Art. 1279. In order that a contract may be valid, it must have the following conditions:

I. Capacity of the contracting parties;

II. Mutual consent;

III. That the subject matter of the contract be lawful;

IV. That it shall have been entered into with the external formalities which the law requires."

"Art. 1286. The consent of those who contract must be clearly shown."

"Art. 1287. He only who has a physical inability to speak or write can express his consent by other unquestionable signs."

"Art. 2920. A contract of purchase and sale does not require for its validity any special formality, except when it pertains to immovable property."

"Art. 2921. A sale of an immovable property, the value of which does not exceed five hundred dollars, can be made by a 'private instrument' which the vendor and the purchaser shall sign in the presence of two known witnesses."

"Art. 2922. If any of the contracting parties should not know how to write, another person, not under legal disability, shall sign it in his name, and at his request, but none of the witnesses can sign in the same manner, (that is, through another person)."

"Art. 2923. Two originals shall be formed of such instrument, one for the purchaser, and the other for the public registry, both to bear the corresponding stamps."

"Art. 2924. If the value of the immovable property exceeds five hundred dollars, the sale shall be reduced to a deed made before a notary (public writing)."

The requirements of the preceding articles would seem

to be too clear and specific to require expert testimony to elucidate them. Nevertheless, Mr. Mena Castillo and Mr. Fausto E. Miranda analyzed the several articles of the statute and testified that with reference to conveyances of real estate situated in the State of Chihuahua, the laws of Mexico and of the State of Chihuahua governed; that the formalities demanded by the statutes must be complied with; that the instrument must be in writing; that the capacity of the parties to the contract must be shown in the instrument; that mutuality must be shown by the signatures of both parties to the deed, either acting in person or through their duly authorized representatives.

We are aware that Mr. Valenzuela undertook, with great volubility, to explain away, negative and nullify the language of the statutes, but as against his enthusiastic efforts in this direction, we submit with confidence the sober statements of the law by two profound lawyers, whose statements of the law are themselves in exact accord with the letter and spirit of the statutes; and who are not forced into wordy and more or less comprehensible dissertations attempting to explain away the plain language of the statute.

It would be strange indeed if the law of the State of Chihuahua did not govern transfers of real estate situated within that sovereignty.

> "It is the universal rule of the common law that any title or interest in land or in other real estate, can only be acquired or lost agreeably to the law of the place where the same is situated."

Bouvier's Law Dictionary, Baldwin's Century Edition, citing: 6 Pick. 286; 1 Paige Ch. 220; 2 Ohio 124; 5 B. & C. 458; 6 Madd. Ch. 16; 10 Wheat. 192, 645; 1 Gill. 280; 6

Binn. 559; Storey, Conflict of Laws, Secs. 365, 428; 152 U. S. 65; 134 Id. 316; 127 Id. 719.

The *lex rei sitae* governs as to the capacity of the parties to any alienation, whether testamentary or *inter vivos*.

Defendant has no desire to reflect upon Mr. Valenzuela, doubtless he filled high administrative offices with satisfaction, but as a legal expert he inspires curiosity, rather than conviction. During his first day's testimony he was not aware of the Chihuahua Code of 1882. He was definitely of opinion that the first Code was that of 1898. (R. 46.) On the following day, when the Code of 1882 was presented to him, he adopted it with more agility than perspicuity.

We have copied in the preceding pages the Articles from the Civil Code of the State of Chihuahua which govern the conveyances in the instant case. We have read with attention the testimony of Mr. Valenzuela, and, we understand him to say that if the deed from Davis to Ranken and others was sufficient to convey title in Texas, it would be sufficient to convey title to land in Chihuahua. We cannot reconcile his statement with Art. 13 of the Chihuahua Civil Code, which we have quoted verbatim above. We cannot reconcile his statement with what we conceive to be the universal rule among nations, i.e., that acquisition and holding of title to real estate is governed by the *lex rei sitae*.

It is, in the language of Mr. Jose Mena Castillo appearing upon pages 358 and 359 of the record, expressed where he aptly sets forth certain rules of statutory construction identical with those in effect in our country and where he states Articles 14 and 18, when read in connection with each other apply to only instruments executed outside of Mexico. Why else was the additional language put in Article 18, to-wit,

"But in effect to real estate the same shall be governed by Article 11"? Unless this was meant to apply to instruments dealing with real estate matters outside of Mexico the language would not have been necessary in the statute. These Articles are 17 and 13 page 24 this brief.

Would any Texas lawyer suggest that the deed of a married woman, resident in St. Louis, which was not acknowledged in accordance with Texas law, would be sufficient to vest title to land in Texas?

See Cross-Examination of Mr. Valenzuela, Tr. of Evidence, pp. 252 to 257.

See testimony of Mr. Mena Castillo, Tr. of Evidence, pp. 281 to 292 and 301 to 302.

The deed from Davis to Ranken and others lacked the essential attribute of showing the capacity of the purchasers to acquire title to land within the prohibited zone.

There is no pretense of effort in that deed to show mutuality of contract; nor capacity of grantor to convey, much less of capacity of grantees to acquire. Will this Court strike from the Civil Code of Chihuahua Arts. 13, 17, 1279, 1286, 1287, 2921, 2922 and 2923? Even Mr. Valenzuela admits mutuality is necessary (R. 45).

The testimony is unequivocal that under the law of 1856, still in force until nullified by the Constitution of 1917, (which did away with the permit to foreigners to acquire land within the prohibited zone), no foreigner could acquire such title without *previous* permit so to do.

The Act of February 1, 1856, Art. 2, reads as follows:

"No foreigner shall, without the *previous* permit of the Supreme Government, acquire real estate (immov-

ables) in the border states or territories unless at twenty leagues from the frontier line." (R. 367.)

There was and is nothing peculiar or unreasonable in such a law. Its counterpart, only more broad, can be found in the statutes of the States of this Union. Mexico had the right to define who should hold title to lands in Mexico, and to prescribe the conditions.

AUTHORITIES

12 Corpus Juris, (Conflict of Laws, Sec. 40), states the *Lex Loci Rei Sitae* as follows:

> "The lex situs, lex loci rei sitae, or law of the place where the thing is situated, is universally regarded as furnishing the rules governing the transfer, encumbrance or devolution of real or immovable property, and generally as to tangible personality or movables; but since movables may have both an actual and a fictitious situs, being sometimes regarded as present at the domicile of the owner, the law of such domicile is sometimes resorted to as furnishing the rules for the solution of questions as to its title and ownership which in effect amounts to an application of the law of the situs. Under these rules the lex situs governs as to the tranfer of land, covenants running with the land, conversion of property from realty in personalty, construction and operation of contracts for the sale of land, and in general as to the construction of deeds; the validity, construction, and effect of mortgages of real estate; the violation of the rule against perpetuities; the validity of contracts relating to land when tested by the statute of frauds; whether a conveyance of land is fraudulent as to creditors; the validity and sufficiency of execution of a power as to realty; the validity of wills as to realty; the validity of trusts; the capacity of a married woman to alienate her separate real property; the respective rights of husband and wife in realty; and as to the

widow's right of dower in her husband's lands. So with regard to movables, the lex rei sitae is ordinarily held to control as to the validity and effect of a chattel mortgage, or of a contract of pledge or a warehouse receipt. Further applications of the law of the situs have been made in determining the liability of property to be sold under legal process, the validity of a transfer of property resulting in a preference to a creditor of an insolvent, whether a partnership has been formed, and as governing the collection and distribution of the assets of a decedent, and the administration of insolvent estates. The obligation of an inn-keeper is to be determined by the law of the country where the inn is."

12 Corpus Juris, pp. 477, et seq., (Conflict of Laws), Secs. 75 to 84, reads as follows:

"Sec. 75. C. IMMOVABLES—1. IN GENERAL. The exclusive jurisdiction which each sovereignty possesses over land within its borders requires that its acquisition, transfer, and devolution be governed by the law of its situs, and this rule applies generally to all property classed as immovables, and operates between the several states of the United States as well as between countries entirely foreign to each other. The principle of comity does not require a state to regard the laws of any other state, so far as they may affect contracts in relation to real estate situated in the former state."

"Sec. 76. 2. CONTRACTS INVOLVING—a. IN GENERAL. It would seem on principle that contracts, although the subject matter involved is immovable property, should be governed, in so far as the personal rights and obligations of the parties as distinct from their effect as transferring the title to the immovable property are concerned, by the proper law of the contract as in the case of other contracts; and there are English, and some American, authorities to this effect. The rule supported by the weight of authority in the

United States, however, appears to be that executory contracts relating to real property are governed as to their requisites, validity, and effect by the law of the place where the realty is located."

"Sec. 77. b. REAL COVENANTS. In an action for the breach of a covenant, the construction and force of the covenant, including what amounts to a breach, and the rule as to damages, must be governed by the lex situs. So the question whether a deed contains a covenant running with the land is to be determined by the law of the state where the land is situated."

"Sec. 78. c. PERSONAL COVENANTS. Following the minority rule stated in a preceding paragraph there are American cases holding that the rule that the lex rei sitae controls as to the title and conveyance of immovable property does not apply to personal covenants, not purporting to be conveyances, between persons outside the jurisdiction of the state, although concerning property within it. So according to some of the authorities, where a contract is made in one state for the purchase of land located in another state, and the money is to be paid in the state in which the contract is made, the lex loci rei sitae will govern as to the title to the land and the lex loci contractus, as to the rights of the parties under contract. Another line of authorities, while in terms applying the lex loci contractus, in effect applies the lex rei sitae, by holding that the law of the place of performance is the governing law of the contract, and that the place of performance is in the state in which the land is situated. This rule has, for example, been applied in determining the damages recoverable for breach of a covenant in a deed. In case a personal covenant is asserted by way of an estoppel, however, it would seem that on principle, its operation and validity should be controlled by the lex loci rei sitae."

"Sec. 79. 3. TRANSFER INTER VIVOS—a IN GENERAL. The law of the sovereignty within

whose limits immovables are situated (lex loci rei sitae) controls as to their transfer. The sufficiency of a deed to pass title must be determined by the lex rei sitae, and this also is the law which must be resorted to to determine the construction and effects of deeds. So in case of a conflict between the law of the domicile of the parties and the law of the situs, it is held that the latter will control as to the capacity to contract with reference to immovables."

"Sec. 80. b. INVOLUNTARY TRANSFER. A purely statutory passing of title, such as under bankruptcy or insolvency acts, will not affect immovables situated outside the jurisdiction. When the law of a foreign country places a restraint on the alienation of the property of a debtor situated in such country, an equity arising on a contract entered into in respect of such property cannot be enforced against the lex loci rei sitae."

Sec. 81. c. ASSIGNMENT FOR CREDITORS. A statutory assignment for the benefit of creditors is inoperative as to real estate situated in another state. A voluntary assignment for the benefit of creditors will pass title to real estate situated in another state where it is adequate as to its form and parties to pass title to real property according to the laws of the rei sitae. So a foreign assignment for the benefit of creditors will protect the real estate in another jurisdiction from the claims of non-resident creditors, although it is not in accordance with the law of the situs, in case such law relates solely to domestic assignments. And this has been held to be true, notwithstanding that under the law of the place where the assignment is made preferences between creditors are permitted, while according to the law of the situs such preferences are forbidden, in case there is no statute inconsistent with such a disposition of the property among foreign creditors and the rights of no domestic creditors are involved."

"Sec. 82. 4. ENCUMBRANCE. The validity of a mortgage of real estate and its construction and effect are controlled by the law of the state where the mortgaged property is situated, although the mortgage is executed and the parties reside in another state."

"Sec. 83. 5. INTESTATE SUCCESSION. The law of the situs controls as to the descent of real property in case of intestacy; it is this law which is to be resorted to to determine the persons entitled to take as heirs."

"Sec. 84. 6. TESTAMENTARY DISPOSITION. As a general rule, the validity of a will disposing of immovables is goverend by the law of the place where the property is situated. So the lex rei sitae controls as to the power of the testator to exclude natural or adopted children from sharing in his estate. So the intention of a testator to disinherit an after-born child must be determined; so far as affecting real property, by the law of the state where such property is situated."

Clark v. Graham, 6 Wheat. 577; 5 Law Ed. 334.
Barnett v. Pool, 23 Texas 517.

The ratification, description and map required by the deed from MacManus to Davis was not executed nor registered until more than twenty-five years after the death of Major Davis, and after the promulgation of the Agrarian Law. The deed from Davis to Ranken and associates was not registered until after the promulgation of the Agrarian Law.

The Agrarian Law (Sec. 53) prescribed, in no uncertain terms, the conditions upon which such instruments could be registered. The state was ignored with lordly disdain. The last paragraph of Sec. 53 announces the penalty for such disregard:

"The violation of this ruling *shall render the title null,* and in such case the record thereof also."

We respectfully request the Court to read the entire proceeding by which the Government of the State of Chihuahua expropriated La Santisima. (R. 263-269). The action of the Government in expropriating this Latifundium will be considered more fully in the second part of this brief in which we present the title of the defendant, but at this time, that the Court may see that no hasty or ex parte action was taken; that the plaintiffs made no serious effort to defend or perfect their title, when called upon to do so; that the State Government found as a matter of fact that plaintiffs held no title; and that it was justified in so finding.

Before passing from consideration of the instruments we have been studying, it is proper to call attention to, and to emphasize the fact that plaintiffs' enthusiastic witness could not sustain the validity of the MacManus and Davis deeds, or the registration thereof, except by maintaining the unconstitutionaltiy of the Agrarian Law of the State of Chihuahua. Unfortunately for plaintiffs' theory of the case, this Court will not, under the decisions of the United States Supreme Court, inquire into the constitutionality of the laws of a foreign country or the acts of another sovereign power as applied to property within the territorial jurisdiction of that power.

AUTHORITIES

Ricaud v. American Metal Company, 246 U. S. 303; 62 Law Ed. 733.

Oetjen v. Central Leather Co., 246 U. S. 269; 62 Law Ed. 726.

Compania Mineral v. Bartlesville Zinc Co., 115 Texas 21; 275 S. W. 388; 41 A. L. R. 737.

Terrazas v. Holmes, 115 Texas 32; 275 S. S. W. 392, affirming 225 S. W. 848.

This question will be considered at more length in the second part of this brief, but it is appropriate to refer to it here because plaintiff's expert was forced, again and again, to fall back upon the unconstitutionaltiy of the Agrarian Law, in order to sustain the validity of plaintiffs' title.

Against this opinion of Mr. Valenzuela, we offer the opinion of Mr. Mena Castillo. (Tr. of Ev. R. 351-365). The opinion of Mr. Miranda. (Tr. of Ev. R. 365-381). The fact that the Supreme Court of Mexico has five times held the Agrarian Law (R. 329) constitutional, (R. 327) wherein that court holds:

> "The decisions of the executive power in agrarian matters are wholly final. If they participate of the character of judicial decisions which because they create or extinguish rights produce the effect of res adjudicata and may not be modified or revoked not even by the President of the Republic because they would violate vested rights of patrimonial character, and property would have no stability."

And finally, and as we think conclusively, this Court has decided that our courts will not pass upon the question adversely to the judicial and administrative acts of the government, in whose territorial jurisdiction the property lies at the time of the judicial determination or administrative act.

Moreover plaintiffs' title papers, constituting Exhibits 20 to 28, inclusive, are inadmissible in evidence and are not relevant or material for any purpose whatever, because they do not purport to have been registered as muniments of title in the manner and form required by the laws either of the State of Texas, where this suit is brought, and where the land

is now situated, nor in the Republic of Mexico, nor the State of Chihuahua, where the land was situated before it was avulsively cut to the United States. These papers purport to show some character of right or authority in certain parties named therein as heirs, executors, adminstrators or trustees of certain parties named therein, but in no instance has ancillary administration been asked for either in Texas or in Mexico.

No Executor, administrator or Trustee has any extra-territorial authority beyond the jurisdiction of the court or state where a will is probated or adminstration is had. Reciprocal statutes have been enacted in this State and others, in a spirit of comity, which permit the holders of such trust powers to function in other sovereignties, upon compliance with such reciprocal statutes, but no such steps have been taken in the instant case. There is not before the Court one scintilla of evidence to prove the relationship of any of the parties named therein to either Charles H. Peck or Thomas Ranken, except the self-serving declarations contained in the instruments, none of which have been probated either in Texas or in Mexico.

AUTHORITIES

14 Texas Jur., Sec. 790, p. 628, reads as follows:

> "Effect of Foreign Adminstrations. Sec. 790. IN GENERAL. Inasmuch as real and personal property belonging to a non-resident decedent and having its situs in this State is governed in most aspects by the laws of Texas and not by those of the foreign state, it is apparent that proceedings in a foreign domiciliary administration can have on such assets no further effect than that given by the Texas statutes. Thus the probate in a foreign jurisdiction of a will that attempts to

dispose of property having its situs in Texas does not of itself give any validity to the will here; nor, in the absence of a statute so providing, is any such will admissible in our courts as evidence affecting the title to lands in this state, although it seems that it may be so used with reference to personal property.

"It is elemental law that an executor or administrator must derive all his authority from the laws of the sovereignty that appointed him. And inasmuch as probate courts have no extra-territorial jurisdiction, it follows that a personal representative, being merely the agent of the court of the state or county wherein he is appointed, is clothed with authority to administer only the assets that are within the jurisdiction of such court.

"Accordingly, it is settled by numerous decisions that letters testamentary and of administration have no legal force or effect beyond the territorial limits of the state in which they are granted. Nor will recognition be extended an executor or administrator, deriving his authority from another jurisdiction upon any principle of comity, for the obvious reason that, if such recognition were granted, a state might sometimes be called upon to enfore a foreign law to the prejudice and detriment of its own citizens."

Paschal vs. Aclin, 27 Texas, 173. (Leading Case).
Slaton vs. Singleton, 72 Texas, 209; 9 S. W., 876.

(The opinion in this case collates and analyzes the Statutes of Texas on the Registration of Foreign Probate Proceedings).

Lindahl vs. Thacker, 26 S. W. (2nd), 283.

The opinion in the last-mentioned case showing inability of representatives of Ranken and Peck to maintain this suit, (writ of error refused), in our opinion makes multiplication of authorities supererrogatory.

In this connection, reply will be made briefly to the proposition set forth in Plaintiffs' Brief, that is, that Shapleigh, as a tenant in common, has the right to recover the whole of the land. In the instant case it appears to be irrelevant to discuss the abstract proposition of law involved in plaintiffs' proposition.

It appears from the deed of Davis to Ranken and others, (R. 119), that Davis conveyed to Ranken thirty-two eighty-firsts (32/81) of the land; to Peck twenty-five eighty-firsts (25/81); to Shapleigh twenty-four eighty-firsts (24/81) thereof.

It is evident that plaintiffs are engaged in a desperate endeavor to overcome the obvious fact that no one of the plaintiffs, except Shapleigh, has or ever had a semblance of a right to acquire or hold title to land within the prohibited zone. Laying aside the fact that Shapleigh utterly lacked the *previous* permit expressly required by the statute as a condition precedent to acquiring title within the prohibited zone, it is a generous gesture indeed which this Court is asked to make, in permitting Shapleigh to recover for his co-tenants a title which they are disqualified to acquire or hold, or else to receive for himself title to an entire tract of land, in which the record shows he only purchased somewhat less than a one-third interest, for less than ten dollars.

In the light of the decision of the Government of the State of Chihuahua that none of the plaintiffs had title to the land, as set forth in the expropriation proceedings, (R. 253-268), and the decisions of the Supreme Court of the United States cited herein, we question whether the judgment of the Court will be as generous as plaintiffs request.

SECOND

The plaintiffs who sue as heirs or representatives of Ranken or Peck offer to the Court no legal evidence of heirship, nor of trusteeship, as executors, adminstrators or trustees. They offer no evidence of right to acquire or hold title to land within the prohibited zone. The permit to hold title within the prohibited zone is personal, cannot be alienated, is not transmissible by inheritance. (R. 317, 318, 360, 361, 371, 369).

Turning from the insufficiency of plaintiffs' record title we pass to their contention of title by limitation.

The attempt to bolster the fatally defective record title of the plaintiffs by the aid of Limitations must fail for two reasons:

a. Because there is not one scintilla of evidence that the plaintiffs or any of their predecessors in title ever had actual or physical possession of La Santisima for one year, one month, one week, or even one day.

b. The entire period which elapsed between the date on which Shapleigh, Ranken and Peck first obtained permit to acquire title to land in the prohibited zone and the date on which the Constitution of 1917 became effective was less than twenty years. The Constitution of 1917 prohibited the acquisition of title within the zone, absolutely and unconditionally. Permits to that end were done away with by the Constitution of 1917.

The two propositions will be considered in their order, but is pertinent to remark that the plaintiffs, (although they discuss the ten year period in their brief, and although their expert grew voluble on the subject), did not plead the ten-year Statute of Limitations. (See Plaintiffs' Petition).

The reason was obvious and was perhaps in their minds when they plead the case, although they seem to have forgotten it since. The statute is explicit as to the twenty-year statute in the instant case, assuming that plaintiffs were holding in good faith as will be succinctly set forth herein.

(a) Let us consider first the evidence of actual, or physical, or public possession of the land. La Santisima is a vast tract of land lying contiguous to the Rio Grande and extending from a point opposite Fort Hancock, Texas, to Ojinaga, a distance of more than one hundred and forty miles, a tract of land larger than the State of Rhode Island. Mr. Valenzuela glibly states that between the grant or confirmation of title to Laureano Muñoz and the institution of this suit title by twenty years statute of limitation could have been perfected twice. He could with equal force have said thrice. But, as was said repeatedly by the witnesses, possession to support limitation or prescription is a fact to be proved by evidence. We would not have supposed that plaintiffs intended to assert title by limitation, since they offered no witness and no fact in support of it, yet they devote a large portion of their brief and half of their citation of Mexican law to it.

Let us review the testimony:

On Novemeber 29, 1864, the President of Mexico seems to have confirmed Laureano Muños a grant of the land given him by the State of Chihuahua in 1819. (R. 17).

In 1886 the alleged heirs of Muñoz convey title to Ignacio MacManus, (R. 47) though without the requisite legal proceedings to establish heirship. No word of evidence is offered to show that Muñoz or his heirs ever had possession of the land, either in person or by tenant or agent, for even one day, or that they ever saw the land.

MacManus acquires title from Muñoz heirs by a deed executed in 1886, in the City of Chihuahua, hundreds of miles away from the land, which recites that all of the parties are residents of the Capital City of Chihuahua.

On May 10, 1887, Ignacio MacManus, acting through his brother, Tomas MacManus, sells the land to Bennett H. Davis, who acts through Telesforo Garcia (R. 51). The instrument is executed in Mexico City. Deed recites that B. H. Davis is a resident of El Paso, Texas, where the evidence shows he continued to reside, as a member of the firm of Davis, Beall & Kemp, until his death in May, 1897. (R. 111, 394).

There is no scintilla of evidence to show that MacManus or Major Davis ever saw the land, or occupied it, cultivated it, leased it, or even ran cattle on it for one year or one day.

On February 13, 1897, Major B. H. Davis, in El Paso, Texas, executes a deed, according to Texas forms, to Messrs. Shapleigh, Ranken and Peck, who are shown by the testimony to have been at all times residents of the City of St. Louis, Mr. Shapleigh up to this hour, and Ranken and Peck until they died.

The whole of the evidence as to possession of the premises by Shapleigh, Ranken and Peck is summarized in Plaintiffs' Brief, on page 3 thereof. If that testimony shows public, physical possession of the land for twenty-years, or any portion of it, we confess our labors in land suits have been misdirected.

The pertinent articles of the Chihuahua Civil Code are the following:

"Art. 919. Possession is the tenancy of a thing

or the enjoyment of a right by ourselves or by another in our name."

"Art. 920. The possession as a means of acquiring is either in good faith or bad faith."

"Art. 921. Those who are capable of acquiring are capable of possessing. Incapacitated persons possess through the means of their legitimate representatives, in conformity with the law."

"Art. 925. Possession gives to him who has it the presumption of proprietorship for all legal effects."

"Art. 926. The actual possessor who proves he has possessed in a former time has in his favor the presumption of having possessed in the intermediate time."

"Art 927. He who possesses or fundamentally believes that he possesses in virtue of a title sufficient to transfer the dominion is a possessor in good faith."

"Art. 928. He is also possessor in good faith who is ignorant of the viciousness of his title. Ignorance is presumed in this case."

"Art. 1168. All those who are capable of acquiring by any other title can acquire by positive prescription; minors and others incapacitated can do so by means of their legitimate representatives."

"Art. 1185. He who prescribes may complete the necessary term for his prescription, by uniting with the time which he may have possessed that which the person who transmitted the thing to him possessed, provided that both possessions have the legal requisites."

"Art. 1187. The necessary possession in order to prescribe must be: 1. Founded on a just title; 2. Of good faith; 3. Pacific; 4. Continuous; 5. Public."

"Art. 1189. He who alleges prescription must prove the existence of the title on which his right is founded."

"Art. 1190. Good faith is only necessary at the moment of acquisition."

"Art. 1193. Public possession is that which is enjoyed in a manner which may be known by those who have interests in interrupting them."

Art. 1194. All immovable properties are prescribed with good faith in twenty years, and with bad faith in thirty; save what is provided in Article 1176."

Art. 1240. The time for prescription is counted by years, and not from moment to moment, except in the case in which the laws expressly determines it to be so."

"ARTICLE 2—Transitory:—The periods of limitation which have been modified in this Code, which begin to run prior to January next, shall be calculated according to the Code which went into effect on March 1st, 1883; and those beginning to run thereafter shall be calculated in accordance with this Code." (Code of 1898.)

(b) Assuming that plaintiffs had been in actual public possession of the land from the date of their permit to acquire title, what would be the state of their title now?

Art. 921, Chihuahua Civil Code, makes it evident that only those who are capable of acquiring, are capable of possessing.

Permit to acquire title to land in the prohibited zone to Shapleigh, Ranken and Peck was dated August 25 1897. (R. 127).

The Constitution of 1917 was proclaimed May 1, 1917. Had plaintiffs been in possession, limitation must have failed to ripen into title by three months and twenty-five days.

The rule may seem harsh, but will any lawyer question that failure of the prescribed period, by even one day will be fatal?

But why speak of failure of possession by months or days, when there is no evidence of possession for one year, one month or one day?

We respectfully submit that plaintiffs have not shown title in themselves.

Inasmuch as the first part of this brief sets out three propositions or questions with regard to the title held by plaintiffs and inasmuch as the question of whether plaintiffs ever lost title, if any they ever had, is involved with the question of defendant's title, we shall brief the last two questions asserted under the defendant's title.

THIRD
THE DEFENDANT'S TITLE

Having demonstrated, as we believe, that plaintiffs have no title to La Santisima and to the Guayuco Banco as a portion thereof avulsively cut from Mexico to the United States in 1926 and having shown as we believe, that plaintiffs lack the legal capacity to acquire or hold title to land within the prohibited zone, we turn with equal confidence to the title or right of the defendant. In support thereof we submit the following propositions:

PROPOSITION I. The Mexican Republic had the right which pertains to every sovereign power to take for public use any and every species of property situated within its territorial dominion.

PROPOSITION II. It is exclusively the province of the Mexican Republic to determine what is a public use and what disposition shall be made of the natural resources of the country, including the lands thereof, to best serve the economic and political security of the people. When, in the judg-

ment of the Mexican people, it became necessary to break up vast landholdings (latifundios) and distribute them among a multitude of small holders, the Republic was but following in the footsteps of the older and most enlightened nations, as is evidenced by the history of the European nations. For example, witness the expropriation of the vast landed estates of France and their distribution among a great horde of peasant proprietors, which has given such security and stability to the French nation as to challenge the admiration of the world. For a more modern example, witness the example of Great Britain, before the establishment of the Irish Free State. The economic misery and discontent of the island, which had wracked the empire for perhaps two centuries, was removed by compelling the subdivision of great landed estates and the settlement of small peasant proprietors, who make compensation therefor over a long period of years, through a most moderate land tax.

The necessity which confronted Mexico can find no better illustration than the case of La Santisima, a tract of land two leagues in width, one hundred and forty miles in length, and embracing an area larger than the State of Rhode Island. Since the State of Chihuahua granted the land to Laureano Muñoz in 1859 to time expropriation proceedings were begun there is no word of evidence to show that any human being had made beneficial use of one foot of it; no evidence that any one of the title holders or claimants ever set foot on it; no tenant is shown to have cultivated an acre, or herded upon it cattle, sheep or even goats. As the Court judicially knows and the testimony discloses, across the river from La Santisima towns rise, (Fort Hancock and McNary), and a great valley is broken into farms. As soon as expropriation proceedings begin, settlement begins. Engineer Cardona testi-

fies that perhaps four thousand settlers were upon the land when he last visited it. (R. 208.)

PROPOSITION III. Under the recognized principles of International Law, Foreigners cannot challenge the validity of acts of the sovereign power which bear impartially and with equal weight upon the Citizen and the Foreigner.

AUTHORITIES

Under Three Preceding Propositions

Kohl vs. United States, 91 U. S., 371; 32 Law Ed., 449.

Cincinnati vs. Louisville & N. R. R. Co., 223 U. S., 390; 56 L. Ed., 481.

Moore's Int. Law Digest, Vol. 4, p. 11, Sec. 537, and cases there cited.

PROPOSITION IV. In obedience to principles of International Comity, and the usage of nations, it is right and customary for a nation to assert and defend the interests of its nationals resident in foreign countries, including indemnification for deprivation of property lawfully acquired, but such indemnification is not sought by attacking the validity of national laws constitutionally adopted and non-discriminatory as between citizen and foreigners, but is attained through political and diplomatic agencies.

AUTHORITIES

Moore's Int. Law Digest, Vol. 4, p. 3, Sec. 534.

> For comprehensive statement and analysis of the laws of modern nations and of the several states of the American Union, with reference to the acquisition and tenure of land by foreigners and the usages of States with reference thereto, see—

Wheaton's Int. Law, Fourth Ed., Part II, Chap. 2 Sec. 82a. See authorities cited under Proposition VII, infra.

PROPOSITION V. Since the Constitution of Mexico, like that of the United States, requires that indemnification be made for private property taken for public use, it is superfluous to inquire whether such obligation rests upon the State, in the absence of constitutional requirement to that effect.

It is by no means true, however, that the duty rests upon the sovereign to make payment in advance of taking, or contemporaneous with taking. An examination of modern Constitutions disclosed that while the principle of compensation for private use is now general, it is not the general rule that the payment should be previously or contemporaneously made. The decision of the Federal Courts and of those of a majority of the States is that when the taking is by the State or of its governmental divisions, payment need not be made previous to or contemporaneously with the taking, unless the Constitution so provides.

AUTHORITIES

The principles almost universally accepted are set forth in Corpus Juris, Vol. 20, p. 833, Sec. 269 of Eminent Domain, and the authorities are there cited.

When property is taken by the United States, prepayment is not necessary. In re Manderson, 51 Fed., 501.

For distinction between taking by the Sovereign, in propria persona, and by private agency serving a public use see—

Lewis on Eminent Domain, Sec. 457, Vol. 2; 20 C. J., 833, Sec. 269.

The State of Texas need not prepay nor secure.

Constitution of 1876, Art. 1, Sec. 17.

This provision applies when land is taken for public road.

Travis County vs. Trogden, 31 S. W., 358.

The change of language in Mexican Constitution of 1917 is conclusive, and the Supreme Court of the Republic has five times passed upon the question.

The change in the Constitution of Mexico is significant. The provision of the Constitution of 1857, Title 1, Art. 27, reads as follows:

> "Private property shall not be taken without the consent of the owner, except for a public purpose, and upon *previous* indemnification. The law shall determine the authority which may make the condemnation and the conditions upon which it may be carried out."

The Article of the Constitution of 1917 reads as follows:

> "Art. 27. . . . Private property shall not be expropriated except for reasons of public utility and by means of indemnification."

The Supreme Court of Mexico has five times held that the expropriation of land under the Agrarian Law is constitutional, and that previous indemnification is not required.

PROPOSITION VI. The Constitution of 1917, Art. 27, Sec. VIII, required the several States, at the next ensuing session of the State Congress, to pass laws putting into effect the Agrarian provision of the Constitution. The Federal Congress was authorized to pass laws necessary to empower

the States to create an agrarian debt, but the language of the requirement clearly indicates that the passage of the enabling act and the creating of the agrarian debt were not conditions precedent to the expropriation and subdivision and sale of latifundios.

Even plaintiffs' expert could not question it, except upon the contention that the Agrarian Law itself was unconstitutional, and in that assertion he is over-ridden by the Supreme Court, and is contradicted by two eminent and profound lawyers, whose lives have been devoted to the active practice of the law, instead of the holding of non-legal administrative office. Mr. Mena testified that he had not heard its constitutionality questioned until he heard it at this trial.

PROPOSITION VII. In the instant case there could rest no obligation upon the Government of the State of Chihuahua to compensate the plaintiffs for the value of La Santisima previous to the expropriation, contemporary therewith, or at any time in the future, since the governmental authority to whom was committed the execution of the expropriation proceedings determined that plaintiffs had no title to La Santisima.

Without unduly prolonging this brief by quoting therein the provisions of the Agrarian Law of the State of Chihuahua, or quoting at length the executive proceedings, which are set forth in full in defendant's Abstract of Title, we respectfully call the attention of the Court to the fact that the expropriation proceedings were in no sense an ex parte proceeding, as testified by Mr. Shapleigh in his deposition. On the contrary, it manifestly appears from the record, the manifest truth of which is inescapable, upon a review of the proceedings, that the plaintiffs were represented by Attorney

Delbert J. Haff throughout, and the recitations in the proceedings are confirmed in every essential part by the testimony of Engineer Cardona; by the testimony of A. P. Coles; and by the powers of attorney which were offered in evidence by the plaintiffs.

It is difficult indeed to explain the indifference, not to say contempt, with which the plaintiffs disregarded the repeated admonition of the Mexican authorities, not only as to the subdivision of latifundium, but as to showing title in themselves, or even their capacity to hold the title within the prohibited zone.

Out of an abundance of caution, the attention of this Honorable Court is invited to the fact that while a permit was introduced upon the trial of this cause, showing that subsequent to the conveyance from B. H. Davis to Shapleigh, Ranken and Peck, a permit was issued to the three of them to acquire title within the prohibited zone, it is nowhere contended that any such permit was exhibited to the Mexican authorities by the plaintiffs when called upon to produce it. On the contrary, in view of their utter failure so to do, the Governor of Chihuahua found that although specifically called upon to show such permit to hold title; and although their attorney, Antonio Horcasitas, has stated in a memorial that such a permit existed, they utterly failed to produce it, and, in the absence of proof, the Governor found that it did not exist. Twice the plaintiffs through their counsel, asked for an extension of time, and twice the extension was granted. (R. 259, 260.)

It further appears that from the papers presented to the Governor by counsel for plaintiffs, a grave doubt was raised as to whether title was claimed to be in the plaintiffs or in the

Rio Bravo Land and Cattle Company, and, though called upon to clear up this matter, plaintiffs made no effort to do so.

We respectfully request the Court to read the conclusions by which Governor Almeida summed up the case against plaintiffs, that the Governor was warranted in holding that the plaintiffs, although given every opportunity to do so, had utterly failed to establish title in themselves or in the Rio Bravo Land and Cattle Company; that notwithstanding utter want of proof of title, the Governor did, nevertheless, in the Third Paragraph of his Decree, (R. 265), decree indemnification to the owners, in accordance with Sub-Section D, of Section 7, of Article 27 of the Federal Constitution, thereby clearly leaving the door open to the plaintiffs to still establish their right to indemnification, if and when they showed ownership to the lands expropriated. We cannot escape the conclusion that the plaintiffs voluntarily abandoned any effort to prove their title or seek indemnification at the hands of the Government of Chihuahua, and elected to place their interests in the hands of the Mixed Claims Commission, and to handle the same through the political department of the Government. This course of action was clearly available to them, as appears from the authorities heretofore cited, and which are again referred to, with additional authorities submitted under this proposition.

Plaintiffs have utterly overlooked the fact that they must recover, if at all, upon the strength of their own title and have devoted a large portion of their brief to the attack of defendan't title. For the purpose of simplifying the matter involved, we admit that the second question involved, as propounded by plaintiffs on page 6 of their brief, is not an essential matter in this case. Confessedly the Governor of the State of Chihuahua could not convey title to land which at

the time of the attempted conveyance was in the United States. As we have heretofore set forth, defendant contends only that having filed an application, he had the prior right to acquire the land. The authorities have been hereinbefore mentioned. Consequently, to meet the vicious attack upon the expropriation proceedings, we turn to an examination of them.

We respectfully request that the court bear in mind that all of the proceedings took place under the Mexican Constitution and the Agrarian law. Plaintiffs' expert nowhere assails the regularity of any of the expropriation proceedings, always falling back upon his supposition that the Agrarian Law is unconstitutional. As we have hereinbefore demonstrated, the Supreme Court of the Republic of Mexico has seen fit to differ with the former Secretary of the Interior and Minister Plenipotentiary to Switzerland and Belgium.

Attached hereto as Appendices A and B are respectively:

1. Mexican laws which do not appear in the law introduced by plaintiffs in the transcript.

2. A translation of the opinion of the Supreme Court of the Republic of Mexico with regard to indemnification.

The expropriation proceedings being legal and in accordance with the laws of Mexico, we turn to the discussion of the Agrarian law.

Article 27 of the Constitution set forth in Appendix A provides, among other things:

> "During the Mexican constitutional term, the Congress and the state legislatures shall enact laws within their respective jurisdictions for the purpose of carrying out the division of large landed estates subject to the following conditions;

(e) The owner shall be bound to receive bonds of a special issue to guarantee the payment of the property expropriated. With this end in view the Congress shall issue a law authorizing the states to issue bonds to meet their Agrarian obligations."

Transitory Article 11 reads:

"Until such time as the Congress of the Union and the state legislatures shall legislate on the Agrarian and labor problems, the bases established by this constitution for said laws shall be put in force throughout the republic."

Obviously, there is a plain mandate in the Constitution of 1917, requiring the state legislatures to pass Agrarian laws. In accordance with the mandate, the State of Chihuahua passed such a law. In accordance with the provisions of that law, the land was expropriated. Plaintiffs assail the proceedings, as we judge it, in two ways:

First: that the indemnification must be simultaneous with the taking.

Second: That indemnification by means of bonds instead of money is not lawful.

Indemnification means among other things, as defined by Webster, to "reimburse". How may a person be reimbursed unless he has suffered some prior loss? The cases hereinbefore cited show that the United States and the State of Texas need not indemnify a person at the actual time of taking. In addition, however, since this case is tried under the laws of Mexico applicable, we respectfully direct the attention of the court to Appendix B of this brief, wherein the Supreme Court of Mexico has held not once, but at least five times, that indemnification is a posterior act. We believe that settles the law. Plaintiffs rely upon the case of Pastor Mon-

cada, widow of Blanco Teodora, decided in 1920, wherein the court holds as *obiter dicta* that *perhaps* the payment of indemnity should not be postponed. That case was decided in 1920. However, in 1926, the year in which this land was cut from the right bank of the Rio Grande to the left bank and came into the jurisdiction of the United States, the Supreme Court of the Republic of Mexico passed upon the question of whether indemnity should be simultaneous at least five times and thus settled the law of Mexico, because, as shown by the testimony, a single decision of the Supreme Court of the Republic of Mexico does not make law. The question must be passed upon five times before it can appear in the official reports, known as the Judicial Seminario. (R. 374). Consequently, we believe that the question of the payment of the indemnity was absolutely settled by the laws of Mexico. Should then the payment be in cash? Obviously the Constitution provides for payment in bonds and we do not believe that this court will look into the reason behind the Constitution, since the mandate is so plain, as hereinbefore shown.

FOURTH

Pretermitting the question of the validity of the expropriation proceedings, we find nevertheless that the plaintiffs have been deprived of their property by a foreign government and they now seek through the courts of this country to recover the same on the theory that the land has now passed to the jurisdiction of the United States. We believe that this question is foreclosed against plaintiffs. We have heretofore referred to the cases upon which we rely in this connection, but desire at this point to emphasize them more fully.

Mexico in 1926 was, as this court judicially knows, a foreign government recognized by the United States of America. Probably the two leading cases on the subject are *Oetgen vs. Central Leather Company*, 246 U. S. 297, and *Ricaud vs. American Metal Co.*, 246 U. S. 305, the latter case arising originally from the identical trial court from which this case comes, wherein the court held that:

> "The fact that property seized and sold by the authority of a foreign government belonged to an American citizen not residing in the foreign country at the time, does not empower a court of this country to re-examine and modify their action."

And in the Oetjen case, again quoting from the syllabus we find a holding to the effect that:

> "Every sovereign state is bound to respect the independence of every other sovereign state and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory."

At the time the Governor of the State of Chihuahua expropriated the land, the land was in Mexico and regardless of the right or the wrong of same, we believe it is settled that the courts of this country will not inquire into the same.

Again in *American Banana Co. vs. United Fruit Co.*, 213 U. S. at page 356, the court says:

> "For another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own intitutions rather than those of the place where he did the acts, not only would be unjust, but would be an interference of the authority of another sovereign, contrary to the comity of nations, which the other states concerned justly might resent."

In *Underhill vs. Hernandez*, 168 U. S. at page 254, the court says:

> "The acts of the defendant herein were the acts of the government of Venezuela and as such are not properly the subject of adjudication of the court in another government."

Judge Learned Hand in *Earn Line S. S. Co. vs. Sutherland S. S. Co.*, 254 Fed. at page 129, states the proposition thus:

> "The act of another sovereign within its own territory is of necessity legal."

Oliver American Trading Co. vs. Government of the United States of Mexico, 5 Fed. (2) 659, C. C. A. 2, enunciates the same principle of law.

We believe the foregoing authorities aptly demonstrates that this court will not inquire into the validity of the proceedings in Mexico when the land involved was in Mexico.

Briefly answering seriatim the propositions outlined by plaintiffs, we ask the questions:

1. Is the taking of the land contrary to the principles of the International laws and established customs? The answer seems to be in the negative inasmuch as the constitutional and statutory method of the taking of said land was followed as we believe we have hereinabove demonstrated. Compensation was to have been in bonds.

2. Is the expropriation in violation of the treaty between the United States and Mexico? In this connection, we respectfully request the court's consideration of Article 9, 2nd Paragraph, of the Convention creating the General Claims Commission, quoted on Page 14 of Plaintiffs' brief. The

very language of the Convention shows that there is in contemplation of the parties the taking of private land, and that in the event the same should be taken, the Commission shall determine whether the land should be returned or whether money should be paid therefor. It is in direct harmony with the language of the trial court and the Circuit Court of Appeals in holding that a claim for restoration should be made through the political department of the government rather than through the courts. Plaintiffs contend they are seeking the land and not damages and, therefore, have no recourse other than the court. The language of the Convention seems to be contrary to plaintiffs' contention.

3. Was the failure to pay plaintiffs for the land taken in violation of the provisions of Mexican Constitution? In this connection we respectfully refer the Court to Appendix B, attached to this brief, wherein the Supreme Court it seems to have foreclosed the question against plaintiffs' contention.

4. Does not a statute of the State of Chihuahua forbid expropriation without compensation? Art. 736 of the Civil Code of the State of Chihuahua (R. 91), it is to be borne in mind, was passed at the time the present Civil Code of Chihuahua went into effect, to-wit, 1898. The Agrarian Law, under which the expropriations took place, was passed in 1922. To us it seems the plaintiffs have overlooked the General Law of statutory construction, that if two laws be in conflict, that passed later in time shall control.

5. Were the expropriation proceedings and Agrarian Law, purporting to authorize it, null and void? Plaintiffs allege the Governor was without authority to conduct the expropriations inasmuch as the Governor was not a Court. This question has also been passed upon by the Supreme Court of

Mexico at least five times. The contention has been met earlier in this brief. We do, however, reiterate the following as held by the Supreme Court of Mexico:

> "The decisions of the executive power in agrarain matters are wholly final. If they participate of the character of judicial decisions which because they create or extinguish rights produce the effect of res adjudicata and may not be modified or revoked not even by the President of the Republic because they would violate vested rights of patrimonial character, and property would have no stability." (R. 327).

6. Did the Mexican Government have jurisdiction over the land in 1930? We admit that it did not. Mexico lost jurisdiction over the land in 1926 when the avulsive change took place, and if plaintiffs are under the impression that we so contend, they are in error.

7. May the Courts of this country inquire into the validity of the Mexican expropriations? We respectfully submit that this has been answered earlier in the brief.

We believe the other propositions submitted by plaintiffs in their brief have been met earlier in this one.

CONCLUSION

It is respectfully submitted that the judgment of the trial court and of the Circuit Court of Appeals should be affirmed, for the reason that the plaintiffs never acquired title through proper recorded muniments, or by prescription; that whatever right they may have acquired, if any, was taken from them in accordance with the laws of Mexico, while the lands were situated within the Republic of Mexico, and subject to its sovereign jurisdiction; and that the courts of the United States will not inquire into the validity of the acts of a foreign

sovereign, done within its own boundaries, upon lands situated therein.

We respectfully request that the judgment of the Circuit Court of Appeals be affirmed.

Respectfully submitted,

RICHARD F. BURGES,
WALTER S. HOWE,
Attorneys for Respondent

By.....

Copy of the foregoing Brief received on this..... day of November, A. D. 1936. Further copy and notice thereof and notice of filing in the Supreme Court of the United States, and earlier filing is hereby expressly waived.

McKENZIE AND GAMBLE,
Attorneys for Petitioners

By.....

APPENDIX "A"
CODE OF 1882

ARTICLE 1402. "The consent of those who contract must be clearly shown."

ARTICLE 1404. "He only who has a physical inability to speak or write can express his consent by other unquestionable signs."

ARTICLE 1787. "The defence of nullity of a contract is perpetual."

ARTICLE 3056. "A contract of purchase and sale does not require for its validity any special formality, except when it pertains to immovable property."

ARTICLE 3057. "A sale of an immovable property, the value of which does not exceed five hundred dollars, can be made by a 'private instrument' which the vendor and the purchaser shall sign in the presence of two known witnesses."

ARTICLE 3058. "If any of the contracting parties should not know how to write, another person not under legal disability, shall sign it in his name, and at his request, but none of the witnesses can sign in the same manner," (that is, through another person).

ARTICLE 3059. "Two originals shall be formed of said instrument, one for the purchaser, and the other for the public registry, both to bear the corresponding stamps."

ARTICLE 3060. "If the value of the immovable property exceeds five hundred dollars, the sale shall be reduced to a deed made before a notary ('public writing')."

ARTICLE 3372. "The title and legal possession of the properties, and the rights and obligations of the author of the

inheritance, are transmitted by the death of the latter to his heirs on the terms established in the present book."

CODE OF 1898

ARTICLE 1598. "If the proof is sufficient and all be agreed, including the representative of the Treasury the Judge shall declare them to be the heirs in the portions to which they would have a right."

ARTICLE 3604. "The possession of the hereditary property is transmitted through the agency of the law to the universal executor from the moment of the death of the author of the inheritance, save as regards the provisions of Article 2068." Those are: "One of the consorts having died, the survivor shall continue in the possession and administration of the social fund with the intervention of the executor (representative) of the will, until the partition is effected."

CONSTITUTION OF 1917

(Only pertinent parts are quoted)

ARTICLE 27. "The ownership of lands and waters comprised within the limits of the national territory is vested originally in the Nation, which has had, and has, the right to transmit title thereof to private persons, thereby constituting a private property.

Private property shall not be expropriated except for reasons of public utility and *by means of indemnification.*

The nation shall have at all times the right to impose on private property such limitations as the public interest may demand as well as the right to regulate the devolpment of natural resources, which are susceptible of appropriation, in

order to conserve them and equitably to distribute the public wealth. For this purpose necessary measures shall be taken to divide large landed estates; to develop small landed holdings; to establish new centers of rural population with such lands and waters as may be indispensible to them; to encourage agriculture and to prevent the destruction of natural resources, and to protect property from damage detrimental to society. Settlements, hamlets situated on private property and communes *with* lack lands or water or do not possess them in sufficient quantities for their needs shall have the right to be provided with them from the adjoining properties, always having due regard for small landed holdings. Wherefore, all grants of land made up to the present time under the decree of January 6, 1915, are confirmed. Private property acquired for the said purposes shall be considered as taken for public utility."

"Legal capacity to acquire ownership of lands and waters of the nation shall be governed by the following provisions:

I. Only Mexicans by birth or naturalization and Mexican companies have the right to acquire ownership in lands, waters and their appurtenances, or to obtain concessions to develop mines, waters and mineral fuels in the Republic of Mexico. The Nation may grant the same right to foreigners provided they agree before the Department of Foreign Affairs to be considered Mexicans in respect to such property, and accordingly not to invoke the protection of their governments in respect to the same, under penalty, in case of breach, of forfeiture to the Nation of property so acquired. Within a zone of 100 kilometers from the frontiers, and 50 kilometers from the sea coast, no foreigner shall under any conditions acquire ownership of lands and waters."

"During the next constitutional term, the Congress and the State Legislatures shall enact laws, within their respective jurisdictions, for the purpose of carrying out the division of large landed estates, subject to the following conditions:

(a) In each State and Territory there shall be fixed the maximum area of land which any one individual or legally organized corporation may own.

(b) The excess of the area thus fixed shall be subdivided by the owner within the period set by the laws of the respective locality; and these subdivisions shall be offered for sale on such conditions as the respective governments shall approve, in accordance with the said laws.

(c) If the owner shall refuse to make the subdivision, this shall be carried out by the local government, by means of expropriation proceedings.

(d) The value of the subdivisions shall be paid in annual amounts sufficient to amortize the principal and interest within a period of not less than twenty years, during which the person acquiring them may not alienate them. The rate of interest shall not exceed five per cent per annum.

(e) *The owners shall be bound to receive bonds of a special issue to guarantee the payment of the property expropriated. With this end in view, the Congress shall issue a law authorizing the States to issue bonds to meet their agrarian obligations.*

(f) The local laws shall govern the extent of the family patrimony, and determine what property shall constitute the same on the basis of its inalienability; it shall not be subject to attachment nor to any charge whatever.

All contracts and concessions made by former governments from and after the year 1876 which shall have resulted in the monopoly of lands, waters and natural resources of the Nation by a single individual or corporation, are declared subject to revision, and the Executive is authorized to declare those null and void which seriously prejudice the public interest."

TRANSITORY ARTICLE 11. Until such time as the Congress of the Union and the State Legislatures shall legislate on the agrarian and labor problems, the bases established by this Constitution for the said laws shall be put in force throughout the Republic."

APPENDIX "B"

ADMINISRATIVE AMPARO IN REVIEW

District Court of Veracruz

Complaint: Miyar, Ignacio de la.

Respondent: The Governor of Veracruz.

Rights Claimed: Articles 14, 16 and 27 of the Constitution.

Act Complained Of: The declaration that the expropriation of certain lots of land belonging to the complainant was of public utility.

Application of the pertinent part of Article 27 of the Constitution, and of Articles 43 and 44 of the Law of Amparo.

(The Supreme Court revoked the decree of the District Judge which granted Federal protection, and denies this.)

SUMMARY

Act complained of: The circumstances that the act complained of is not irreparable is no ground for preclusion from amparo.

Preclusion: The court has considered that there are no other causes of preclusion from amparo than those expressly set forth in articles 43 and 44 of the respective enabling act.

Expropriation: Article 27 of the Constitution in providing that, "The laws of the Federation of the States, in their respective jurisdictions, shall determine the cases in which the occupation of private property shall be of public utility; and, in accordance with said laws, the administrative

authority shall make the corresponding declaration," has wished to grant and has granted to the legislative Power of the States, when dealing with property that is situated within their jurisdiction, a sovereign power that no other authority may invade; and, therefore, is not subject to discussion in a trial of rights, otherwise the Court would substitute its criterion for that of the authorities to whom such judgment is entrusted.

Same: If no exception has been made to the constitutionality of the law upon which the expropriation is founded, this circumstance alone is sufficient for the denial of the amparo sought against the expropriation.

Same: The appraisal of the thing expropriated and the payment of the indemnity, are acts posterior to the expropriation, which, being in the future, do not give occasion for amparo; and if, in making said indemnification and appraisal, some of the constitutional, or relative legal, precepts are infringed, then will be the opportunity to pray for amparo against such appraisal and indemnification.

Note: It is not abridged because the findings are sufficiently explicit.

The file bears number 672 of the year 1924, and mandate was pronounced on July 3, 1926.

CONCLUSIONS

First: Inasmuch as among the grievances set forth by the respondent, the preclusion of the cause action is alleged, because of the circumstances that the act complained of is not irreparable, this question should be studied first, because if resolved in the affirmative there will be no reason to go to the heart of the matter.

Second: The Supreme Court of Justice has considered that there are no other causes of preclusion than those expressly set forth in articles 43 and 44 of the Amparo Enabling Act, and since the one alleged by the Governor of Veracruz is not among them there is no room for ordering the dismissal prayed for, and the examination of the case with regard to its ground of action should proceed.

Third: The principal violation that is claimed is that of article 27 of the Constitution, because providing (as it does) that expropriations may be made only by means of indemnification and by reason of public utility, none of these requisites are contained in the declaration of the Governor of the State.

From the verified brief of the respondent it appears that the expropriation decreed is owing to the establishment of colonies in which modern and sanitary dwelling-houses shall be built, whereby rents will be made to lower and the epidemics, so frequent in the Port of Veracruz, will be made to disappear, and it is set forth in the declaration that it shall be by means of compensation in the terms expressed by the Federal Constitution.

The mere enumeration of the object pursued is sufficient to affirm that the public utility, which the complainant denies, does exist; but, moreover, article 27 of the Constitution in providing in its 7th section that, " the laws of the Federation and of the States in their respective jurisdictions, shall determine the cases in which the occupation of private property shall be of public utility; and in accordance with said laws the administrative authority shall make the declaration," has wished to concede and has conceded to the Legislative Power of the States, when dealing with property situated within their jurisdiction, a sovereign power that no other authority may

invade, and, therefore, it is not subject to discussion in a trial of rights. Otherwise, the Supreme Court would find itself obliged to find that when public utility exists in order to deny Federal protection, and when it does not exist in order to grant it, thereby substituting itself for the authorities to whom that finding is entrusted, in view of the terms of article 27 of the Constitution quoted above.

Fourth: By laying aside the thesis sustained in the foregoing finding, in this present case it must be said that the declaration made by the Constitutional Governor of Veracruz is grounded on articles 3 and 4 of Decree No. 355 of July 6, 1922, which authorizes the Executive to expropriate, by reason of public utility and by means of indemnification, the lots of land lying within the perimeter of the City of Veracruz, when the construction of houses and apartments suitable for the proletarian class shall have been commenced in a formal manner, and within the term of six months reckoning from the date of said decree, which said construction of houses is, according to article 1 of the same decree, of public utility; this law has not been objected to by the complainant; and, as has been said, it grounds the declaration of the Governor, a circumstance that in itself is sufficient for the denial of amparo.

Fifth: The violation of article 14 is made to consist in that the requisites provided by Act No. 3, of May 24, 1898, and by Section 7 of Article 27 of the Constitution were not complied with; and these legal provisions were obeyed, for, as has been said above, the establishment of colonies, such as are here being dealt with, is of public utility, and with respect to the appraisal of that which is to be taken, it is stated in the declaration of the Governor that the indemnification shall be in accordance with the provisions of the Federal Constitution,

that is, based on the amount at which the property is valued for fiscal purposes, with an addition of ten per cent. *...Furthermore, it should be observed that with respect to the appraisal of the lot and the payment of the indemnity posterior proceedings are being dealt with, for, up to this date there is nothing more than the declaration of expropriation, therefore, in truth, we are dealing with future acts that do not merit amparo, especially so since in the selfsame declaration it is set forth that the Government of the State shall indemnify the owners in the terms expressed by the Federal and Local Constitutions;* if in the proceedings relative to the indemnification and appraisal any of the precepts of the enabling act or of the Constitution should be infringed, then will be the opportune time to sue for amparo. There is no violation, therefore, of the right consecrated by article 14, and since that of article 16 is a consequence of the violation that the complainant considers had been committed against the former article, there is no room for the granting of amparo on this count, either.

Therefore it is ordered and resolved:

First: The decree pronounced by the District Judge of the State of Veracruz, in the suit for amparo to which this record refers, is hereby revoked.

Second: The Justice of the Union does not shelter nor protect Señor Ignacio de la Miyar against the acts of the Constitutional Governor of Veracruz which consist in the declaration of May 26, 1924, published in No. 29 of the Official Gazette on June 3 following, wherein the expropriation from the complainant of the lots of land numbered 15, 17, 19, 24, 26 and 28, Cuartel 9, Block 37, the first three belonging in Avenida Jimenez and the other three in Avenida Pino Suarez,

and numbered 24, 26 and 28 in Revillagigedo Street, and 165, 167, 169 and 171 in Francisco Canal, Cuartel 9, Block 38, in the City of Veracruz, was declared to be of public utility.

Third: Notify; publish; demand the revenue tax stamps that may be necessary; and together with an exemplified copy of this opinion return the proceedings to the court of their origin, and file this record in due order of time.

The Supreme Court of the Nation so decreed, by a majority of nine votes, against two by Mr. Justice Guzman Vaca and Castro. The Mr. Justices Urbina, Olea and Vicencio denied the amparo for the reasons set forth in the decree, with the exception of those expressed in the third finding. The Chief Justice and Associate Justices, who composed the full tribunal, sign together with the clerk who authenticates. ATTEST: Manuel Padilla; J. Guzman Vaca; S. Urbina; S. M. Olea; Gustavo A. Vicencio; Ricardo B. Castro; Leop. Estrada; E. Garza Perez; Franco M. Ramirez; F. Diaz Lombardo; Teofilo H. Orantes; F. Parada Gay, Clerk.

VOLUME 19

JUDICIAL WEEKLY OF THE FEDERATION

Alphabetical Index of the Juridical Thesis Sustained by the Opinions that are Published in Full in the Volume, etc., among others:

EXPROPRIATION. Page 1245 of the Volume.)

If the constitutionality of the law upon which the expropriation is founded is not questioned, this circumstance, in itself, is sufficient for the denial of amparo prayed for against the expropriation. (Miyar, Ignacio de la. Page 23.)

SUSTAINING THE SAME THESIS:

Jul. 3—Sociedad Española de Beneficencia, versus el Gobernador del Estado de Veracruz

Jul. 3—Loustau Dionisio, versus ditto

Jul. 3—Perez Castilla Jose, versus. ditto

Jul. 3—Fernandez Juan Antonio, versus ditto

Jul. 3—Tunon Canedo Vda. de Docurro Mercedes, versus ditto

Jul. 3—Viya Hermanos, Sucs. y coags., versus ditto

Jul. 3—Aillaud Leon, versus ditto

Aug. 21—Rivas Anell Luisa, versus el Gobernador de Veracruz

EXPROPRIATION. (Page 1246 of the Volume.)

The appraisal of the thing expropriated and the payment of the indemnity are the acts posterior to the expropriation, which, being in the future give no reason for amparo; and if in making said indemnity and apraisal, any of the constitutional, or of the legal, precepts thereto, then will be the opportunity to pray for amparo against such appraisal and indemnification. (Miyar, Ignacio de la. Page 23.)

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EXPROPRIATION: (Page 1247 of the Volume.)

Article 27 of the Constitution in providing that, "The laws of the Federation and of the States, in their respective jurisdictions, shall determine the cases in which the occupation of private property shall be of public utility; and, in accordance with said laws, the administrative authority shall make the corresponding declaration," has wished to grant and has granted to the legislative Power of the States, when dealing with property that is situated within their jurisdiction, a sovereign power that no other authority may invade; and, therefore, it is not subject to discussion in a trial of rights, otherwise the Court would substitute its criterion for that of the authorities to whom such judgment is entrusted. (Miyar, Ignacio de la. Page23.)

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Aug. 21—Rivas Anell Luisa, versus el Gobernador de Veracruz

PRECLUSION: (Page 1257 of the Volume.)

The court has considered that there are no other causes of preclusion from amparo than those expressly set forth in articles 43 and 44 of the respective enabling act. (Miyar, Ignacio de la. Page 23.)

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Jul. 3—Aillaud Leon, versus ditto

Aug. 3—Lopez Carlos F., versus el Juez Primero de lo Civil de la Capital y Secretario de Guerra y Marina.

Sept. 6—Delgado Enrique, versus el Supremo Tribunal de Justicia del Estado de Michoacan.

Dec. 22—Ramirez Gregorio versus el Presidente Municipal e Inspector de Policia de Guadalajara.

Dec. 22—Valdez Juan, versus el Presidente Municipal e Inspector de Policia de Guadalajara.

Dec. 22—Herrera Rita versus el Presidente Municipal e Inspector de Policia de Guadalajara.

SUPREME COURT OF THE UNITED STATES.

No. 125.—October Term, 1936.

A. L. Shapleigh, et al., Petitioners, *vs.* Pascual Mier, Respondent. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[January 4, 1937.]

Mr Justice Cardozo delivered the opinion of the Court.

The action is trespass for the trial of title.

Plaintiffs, petitioners here, are citizens of Missouri; defendant, respondent here, is a citizen of Mexico. A tract of 337 acres in Texas, known as "El Guayuco Banco No. 319", on the left bank of the Rio Grande river, is the subject matter of the controversy. A jury having been waived, the trial was by a judge, who made his findings of fact and conclusions of law, and gave judgment for defendant. From this there was an appeal, its scope, however, narrowed by the manner of the trial and the form of the decision. *Eastman Kodak Co.* v. *Gray*, 292 U. S. 332; *Harvey Co.* v. *Malley*, 288 U. S. 415; *Fleischmann Co.* v. *United States*, 270 U. S. 349. A single question was open: were the conclusions of law supported by the facts as found, when supplemented by any other facts within the range of judicial notice? The Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court. 83 F. (2d) 673. We granted certiorari to pass upon the contention, strongly pressed by the petitioners, that their rights had been illegally divested through the action of a foreign government.

The land in controversy was once part of the Mexican state of Chihuahua. In 1926 it was cut by avulsion from the south or right bank of the Rio Grande to the north or left bank, and became part of the United States. By the ordinary rule a change of location resulting from avulsion would have left Mexico still sovereign over the territory thus moved, the centre of the old channel remaining as the boundary. *Missouri* v. *Nebraska*, 196 U. S. 23, 35; *Nebraska* v. *Iowa*, 143 U. S. 359, 361, 367, 370. Here a different rule applied by force of a convention, proclaimed June 5, 1907

(35 Stat. 1863), whereby the boundaries were to shift in the event of future changes, with exceptions not now material as to population and area. A Boundary Commission, previously established but confirmed by the Convention, marked the change upon the ground. Sovereignty was thus transferred, but private ownership remained the same. *United States* v. *Chavès,* 159 U. S. 452, 457; *United States* v. *Percheman,* 7 Pet. 51, 86. To find the title to the land today we must know where title stood while the land was yet in Mexico.

In 1925, before the river had wronght the change, proceedings were begun for the division of a "latifundium", which embraced the land in controversy, and for its acquisition by the state. A petition in due form was submitted to the Governor of Chihuahua, and resulted in a decree, dated March 5, 1925, whereby the State of Chihuahua was proclaimed to be the owner. The District Judge has found that the plaintiffs and those from whom they trace their claim were notified of the proceedings and were given the opportunity to prove their title, but failed to do so. The judge has also found that the proceedings were regular and valid, that there was no requirement in the Constitution or laws of Mexico whereby payment must be made or secured at or before the time of expropriation, and that by force of the decree the plaintiffs were divested of any title that had been theirs. Following this expropriation, the defendant, who is now in possession, filed with the proper officials an application that he be permitted to buy the lands in suit, acquiring by that request an inchoate or potential interest, which was afterwards perfected by the payment of the purchase price.

Petitioners concede that the expropriation decree, if lawful and effective under the Constitution and laws of Mexico, must be recognized as lawful and effective under the laws of the United States, the sovereignty of Mexico at the time of that decree being exclusive of any other. *Oetjen* v. *Central Leather Co.,* 246 U. S. 297; *Ricaud* v. *American Metal Co.,* 246 U. S. 304; *American Banana Co.* v. *United Fruit Co.,* 213 U. S. 347; *Underhill* v. *Hernandez,* 168 U. S. 250; *Hewitt* v. *Speyer,* 250 Fed. 367; *Earn Line S. S. Co.* v. *Sutherland S. S. Co.,* 254 Fed. 126; *Oliver Am. Trading Co.* v. *Gov't of the United States of Mexico,* 5 F. (2d) 659; *Compania M. Y. R. R., S. A.* v. *Bartlesville Zinc Co.,* 115 Tex. 21. The question is not here whether the proceeding was so conducted as to be a wrong to our na-

tionals under the doctrines of international law, though valid under the law of the situs of the land. For wrongs of that order the remedy to be followed is along the channels of diplomacy. "A citizen of one nation wronged by the conduct of another nation, must seek redress through his own government." *United States* v. *Diekelman,* 92 U. S. 520, 524. Cf. *Ware* v. *Hylton,* 3 Dall. 199, 230; *Young* v. *United States,* 97 U. S. 39, 67, 68; *Frelinghuysen* v. *Key,* 110 U. S. 63, 71, 75. Indeed, a tribunal is in existence, the International Claims Commission, established by convention between the United States and Mexico, to which the plaintiffs are at liberty to submit and have long ago submitted a claim for reparation. *Convention of September 8, 1923,* proclaimed March 3, 1924; 43 Stat. 1730. What concerns us here and now is the efficacy of the decree under the land law of Mexico at the date of its proclamation to extinguish hostile claims of ownership and pass the title to another.

Petitioners are content thus to limit the inquiry, if we read their argument aright. They insist that the decree which purports to divest them of their title, is a nullity even by the law of Mexico, and that it is the duty of our courts, if the nullity has been made out, to adjudge ownership accordingly. Meeting the objection that the acts of an independent government done in its own territory are not subject to reëxamination by the courts of another (*Underhill* v. *Hernandez, supra; Oetjen* v. *Central Leather Co., supra; Hewitt* v. *Speyer, supra; Oliver Am. Trading Co.* v. *Gov't of the United States of Mexico, supra*), they say that the land in controversy is now a part of the United States; that it was brought into our domain by a treaty of cession, the avulsion being merely the occasion that made the treaty operative; and that in passing upon the validity of the Mexican decree we are adjudicating a claim of title to part of our own soil. To do this, they maintain, is an incident of the judicial function. Meeting the objection that by the findings of the trial court the decree and the proceedings leading up to it are valid, they make a twofold answer. They say that the laws formerly prevailing in territory acquired by treaty or convention are those of an antecedent government rather than a foreign one, and are the subject of judicial notice. *Fremont* v. *United States,* 17 How. 542, 557; *United States* v. *Perot,* 98 U. S. 428, 429, 430; *United States* v. *Chaves, supra,* p. 459. They say again that if such notice is not appropriate, a finding as to a foreign law is not

solely one of fact, but one of fact and law compounded, which may be reviewed upon appeal, like a finding in certain circumstances as to the meaning of a document. Wigmore, Evidence, vol. 5, § 2558; *Fitzpatrick* v. *International Ry. Co.*, 252 N. Y. 127, 139, 140; *Saloshin* v. *Houle*, 85 N. H. 126; *Compania Transcontinental* v. *Mexican Gulf Oil Co.*, 292 Fed. 846; *Hanley* v. *Donoghue*, 116 U. S. 1, 6.

We leave for another case a delimitation of the principles thus invoked by the petitioners to clear a pathway to review. To delimit them with accuracy is unnecessary now, for, accepting them, provisionally, in their fullest length and breadth, we find the expropriating decree to be proof against assault. The defect imputed to it is expropriation in advance of payment or without adequate security, either payment or security being necessary in the view of the petitioners to effect a change of title. What the decree does provide is that there shall be "indemnity" to the owners, whoever they may be, for every interest condemned, and that bonds of the state shall be delivered as a medium of payment. Experts testifying for the defendant tell us that such indemnity is adequate under the Constitution of the Federal Republic (Constitution of Mexico, 1917, Art. 27), and also under the Agrarian Law of the State of Chihuahua. Cf. *Sweet* v. *Rechel*, 159 U. S. 380; *Crozier* v. *Krupp*, 224 U. S. 290, 306; *Phillips* v. *Comm'r*, 283 U. S. 589, 597; *Hurley* v. *Kincaid*, 285 U. S. 95, 104. The pertinent articles are quoted in the record, and give reasonable support to the opinion so expressed.* Other witnesses testifying for the plaintiffs, advance a different

*Constitution of Mexico, 1917, Article 27:

"Private property shall not be expropriated except for reasons of public utility and by means of indemnification.

"The Nation shall have at all times the right to impose on private property such limitations as the public interest may demand as well as the right to regulate the development of natural resources, which are susceptible of appropriation, in order to conserve them and equitably to distribute the public wealth. For this purpose necessary measures shall be taken to divide large landed estates; to develop small landed holdings. . . . Private property acquired for the said purposes shall be considered as taken for public utility. . . .

"During the next constitutional term, the Congress and the State Legislatures shall enact laws, within their respective jurisdictions, for the purpose of carrying out the division of large landed estates, subject to the following conditions. . . .

"(c) The owners shall be bound to receive bonds of a special issue to guarantee the payment of the property expropriated. With this end in view, the Congress shall issue a law authorizing the States to issue bonds to meet their agrarian obligations."

view. Opinions of the Supreme Court of Mexico are laid before us in the briefs, and were summarized by the witnesses, though they were not exhibits at the trial. One gives color of support to the view advanced for the petitioners. Five of later date tend the other way. There is testimony that by the law of Mexico five decisions are necessary to give rise to a controlling precedent. For anything to the contrary appearing in the record, the claimants are still at liberty, though their estate has been divested, to receive delivery of bonds of the State of Chihuahua upon giving evidence of title.

In what has been written, we have assumed in favor of the petitioners, but without intending to decide, that the land law of Mexico in the territory now part of Texas is a proper subject of judicial notice. The assumption helps them nothing. A different case would be here if they were able to refer us to documents or other evidence *dehors* the present record establishing a different rule from that stated in the findings. In such conditions, the doctrine of judicial notice might be a crutch on which to lean. But none of these extrinsic aids to judgment has been placed at our disposal. Neither through any reference to documents nor through other sources of information has anything been added to what has been developed by the witnesses in the pages of this record. The situation is thus the same, whatever the extension of the doctrine of judicial notice, as if the record stood alone.

Heed must be given to the burden of proof, at least when other tests are lacking. In this action to establish ownership, petitioners must recover, if at all, on the strength of their own title. Judicial notice is unavailing to rid them of that burden. To say that a court

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Agrarian Law of the State of Chihuahua:

"Article third: Owners of larger extensions of lands than those prefixed in Article 1st, are under the obligations to divide into fractions their lands, and, to this effect a term of ninety days is granted them from the date on which this law goes into effect, so that they may select the extension of land they can keep; and another term of six months, from same date, is granted them for the formulation of the project for the division into fractions of the land in excess, which project is to be submitted to the Executive of the State for its approval attaching thereto corresponding plats of the land together with authentic title deeds."

"Article sixth: By the mere fact that the owners, do not present the plats to the Executive of the State in the form and terms as provided for in the article 3rd., it shall be understood that they refuse to divide the latifundium, into fractions, and the Executive of the State shall carry it out (the division into fractions of said latifundium) by means of expropriation in accordance to provision of subsection C, or the section VII of Article 27th, of the General Constitution."

will take judicial notice of a fact, whether it be an event or a custom or a law of some other government, is merely another way of saying that the usual forms of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. Wigmore, Evidence, vol. 5, § 2567; Thayer, Preliminary Treatise on the Law of Evidence, pp. 277, 308. But the truth, of course, is that judicial notice and judicial knowledge are far from being one. The law is not so vain as to make pretense of their identity. To the contrary, a court that is left without knowledge of a fact after exploring to the full every channel of information must needs decide against the litigant who counts upon the fact as an essential of his claim. *De non apparentibus et de non existentibus eadem est ratio.*

We are not persuaded upon this record, supplemented by everything now brought to our attention, that the law of Mexico is other than by the concurrent judgments of the courts below it has been here adjudged to be. That being so, petitioners have not maintained the burden of overcoming the decree. Their claim of title fails.

The judgment is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.